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IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR THE COUNTY OF PALM BEACH, FLORIDA

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THE STATE OF FLORIDA, et al.,

Plaintiffs,

-against-

Civil Action No.
CL95-1466AH

THE AMERICAN TOBACCO COMPANY, et al.,

Defendants.

----------x

March 21, 1997
9:35 A.M.

Deposition of DAVID B. McCALL, taken by Defendant R.J. Reynolds Tobacco Company, at the offices of Jones, Day, Reavis & Pogue, Esqs., 599 Lexington Avenue, New York, New York, before David Henry, a Certified Shorthand Reporter and Notary Public within and for the State of New York.

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A P P E A R A N C E S:

NESS MOTLEY LOADHOLT RICHARDSON & POOLE, ESQS.
Attorneys for THE STATE OF FLORIDA, et al.
151 Meeting Street, Suite 600,
P.O. Box 1137 (29402),
Charleston, South Carolina 29401

BY: JODI W. FLOWERS, ESQ.,
of Counsel.

JONES DAY REAVIS & POGUE, ESQS.
Attorneys for R.J. REYNOLDS TOBACCO COMPANY
North Point
901 Lakeside Avenue,
Cleveland, Ohio 44114

BY: KIM F. BIXENSTINE, ESQ.,
-and-
MARJORIE H. KITCHELL, ESQ.,
of Counsel.

SKADDEN ARPS SLATE MEAGHER & FLOM LLP
Attorneys for UST INC. and UNITED STATES TOBACCO COMPANY
919 Third Avenue
New York, New York 10022-3897

BY: THOMAS E. FOX, ESQ.,
of Counsel.

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D A V I D B. M c C A L L,
having been first duly sworn by the Notary Public (David Henry), was examined and testified as follows:

EXAMINATION BY MS. BIXENSTINE:

Q. Mr. McCall, I am Kim Bixenstine. I represent defendant R.J. Reynolds Tobacco Company in this matter. You understand that you are here today as an expert witness on behalf of the State of Florida in the action that they filed against the cigarettes companies and others?

A. Yes.

Q. And you are here pursuant to a subpoena, is that correct?

A. Yes, I imagine so, if you say so.

MS. FLOWERS: I do think he is here voluntarily.

THE WITNESS: I didn't know anything about a subpoena.

Q. Have you ever been deposed before, Mr. McCall?

A. No, I haven't.

Q. Have you ever testified before?

A. No, I don't think so.

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Q. Okay. I'm going to give you some rules of thumb then for your deposition today. First of all, if I ask you a question and you can't hear me, please tell me and I will repeat the question. Will you do that, sir?

A. Sure.

Q. If I ask you a question that you don't understand, please tell me and I will try to rephrase it in a way that is understandable to you. Will you do that?

A. Sure.

Q. I would ask that you give verbal responses, not a shake of the head or a shrug of the shoulders so that the transcript is clear, and I would ask that you wait until I have finished asking my question, even if you know what I'm asking before you begin your answer, again, so that the transcript is clear. Will you do that?

A. Yes.

Q. From time to time counsel for the State of Florida, Ms. Flowers, may interpose an objection, and simply wait until she has stated her objection and then you can go ahead and

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answer the question. Will you do that?

A. Yes.

Q. Okay. If at any time you'd like to take a break, let me know. There is a restroom right outside our conference room.

Have you ever served as an expert witness before, Mr. McCall?

A. No.

Q. Have you been asked to serve as an expert witness in any case against the cigarette companies other than this one?

A. I was asked in the last month, or I got a letter from the state of Texas.

Q. And have you agreed to serve as an expert in that case?

A. No, I went skiing.

Q. So you've declined that?

A. No, I haven't gotten back in touch with them. I've just gotten back.

Q. Mr. McCall, you said that you haven't testified before, and I take that to mean that you've never testified at a trial, is that right?

A. Yes.

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Q. You have testified in a hearing before Congressman Lukens' committee, that was back in 1989. Do you recall that?

A. Yes, I do.

Q. And were you sworn to tell the truth in that testimony?

A. Yes.

Q. The same procedure applies here. You are sworn to tell the truth, and the testimony that you give today can be used in court. You understand that?

A. Yes.

Q. I'd like to mark as McCall deposition Exhibit 1, a three-page document entitled expert disclosure with a two-page resume attached.

(McCall Exhibit 1 for identification, Expert Disclosure.)

Mr. McCall, I'm handing you what has been marked as McCall Deposition Exhibit 1 and ask you if you've seen this before.

A. Yes, I have.

Q. Referring to the first page, which is the expert disclosure, who prepared that document, Mr. McCall?

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A. I imagine people at Jodi Flowers' office.

Q. Did you review it before it was submitted?

A. Yes.

Q. Okay, when was that, do you recall?

A. A month ago.

Q. Did you make any changes to it before it was submitted?

A. No.

Q. You approved of it as it was written?

A. Yes.

Q. I'd like to turn to the second page of that document, which appears to be your resume. Actually for the record, the second and third pages of this three-page document are Mr. McCall's resume.

Who prepared this resume, Mr. McCall?

A. My office did.

Q. Did you review it after it was prepared?

A. Yes.

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McCall

Q. And by your office, you mean Shepardson Stern & Kaminsky?

A. Yes.

Q. Are you still at Shepardson Stern?

A. Yes.

Q. This document indicates that you went to Yale University, is that right?

A. Yes.

Q. And you attended Yale after your military service in Japan?

A. That's right.

Q. Did you obtain any degree from Yale?

A. No, my father died. I went to work.

Q. I see. Have you obtained any college degree from any educational institution?

A. No.

Q. Have you obtained any formal education since you left Yale in 1949?

A. No.

Q. What was your area of study at Yale?

A. Well, freshman year is apt to be pretty general.

Q. So you had a pretty general course of study?

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A. Yeah, liberal arts.

Q. And so you left after your freshman year because of your father's death?

A. Yes.

Q. All right, I'd like to turn to your employment history. Did you go to Young & Rubicam immediately after leaving Yale?

A. No, I worked for the Connecticut General Life Insurance Company for a brief time.

Q. And what did you do for the Connecticut General Life Insurance Company?

A. I was a trainee.

Q. And when you say a brief time, how long?

A. I think I went to work in the summer, you know, in July or something, and I left the following January.

Q. And then in January, where did you go?

A. To the messenger room at Young & Rubicam.

Q. Your resume indicates that you were also a copywriter at Young & Rubicam?

A. Yes.

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McCall

Q. So when did you start working as a messenger and when did you start working as a copywriter?

A. I remember that it took me a year to get out of the messenger room into the mail room, and it took about three months after that to get into the copy department. That was a fundamental training thing they did in those days.

Q. And how long in total did you work for Young & Rubicam?

A. Two and a half years.

Q. So that would take you to about 1951 or so?

A. Yes.

Q. And why did you leave Young & Rubicam?

A. Well, there was a wonderful advertising agency, although a very small one called Ogilvy, and I was offered a job there.

Q. If you look at your resume, Mr. McCall, it indicates that you worked at David J. Mahoney, Inc. Did you work there in between the time that you were at Young & Rubicam and the time you went to Ogilvy & Mather?

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A. No, I worked at Ogilvy from 1950 to 1952 or something like that, and then I worked for two years at David J. Mahoney, and then I went back to Ogilvy.

Q. Okay, so your resume to the extent that it suggests that you worked at Ogilvy & Mather from 1950 to 1962 is not quite accurate, is that right?

A. It's quite inaccurate as a matter of fact, because I didn't go to Ogilvy until 52; 51, 52. Then the David J. Mahoney part was a two-year interview, and did I leave Ogilvy in 62.

Q. Okay. So you went to Ogilvy & Mather around 1952, you left there when, about 1943?

A. Roughly.

Q. And why did you leave Ogilvy & Mather to go to David J. Mahoney?

A. Well, David Ogilvy was a very strong person, and I wanted to see if I could be a creative person on my own, and I got an opportunity to do that, and I took it.

Q. And that was with David J. Mahoney. So you were creative director at David J.

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Mahoney?

A. Yes.

Q. And how large of an agency was that at the time?

A. Small.

Q. In the first two years that you worked at Ogilvy & Mather, what were the primary accounts that you worked on?

A. Let's see, Chase Manhattan Bank, except I think it was just Chase then; Schweppes. This was just a small agency that you worked on lots of stuff; Viella, Hathaway, things like that.

Q. What did you work on at David J. Mahoney?

A. We had White Rock Beverages, Good Humor Ice Cream.

Q. What type of beverages are White Rock beverages?

A. Sparkling, ginger ale, you know, a local --

Q. Carbonated soft drinks?

A. Yes.

Q. Any other accounts that you worked on

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that you can recall at David J. Mahoney?

A. Not offhand, but I could get you a list of them if you want.

Q. All right, why did you leave to go back to Ogilvy & Mather?

A. Well, a couple of reasons. One is that David Mahoney was asked by Good Humor, one of our clients, to be its president, and he asked me if I would like to get another account partner, and I knew that I really didn't, and I wanted to go back to Ogilvy, which I did.

Q. So were you and Mr. Mahoney the only two principals at David J. Mahoney?

A. Well, he was the only principal.

Q. I'm sorry, you have to wait before you start to answer. Okay, he was the only principal, and were you the only other creative person working at that agency?

A. I think at the end there were three or four of us, but I was the creative director.

Q. And at that time you were in your early 20s, is that right?

A. Yes.

Q. So you went back to Ogilvy & Mather

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at approximately what year?

A. I would say 54 or 5.

Q. Well, I had down that you went to Ogilvy & Mather in 52.

A. Right.

Q. And then you left to go to David J. Mahoney in 54.

A. Right.

Q. So were you only there for approximately a year?

A. Two years.

Q. Two years. So it was 55 or 56?

A. Right.

Q. And when you went back, were the accounts that you worked on the same, Schweppes --

A. No, it was quite a different agency by then. We had a lot of business of different sorts, one of which incidentally was Philip Morris. They had a funny brand called Spud, which was a mentholated cigarette.

Q. Did you work on that tobacco account?

A. Yes, for a very brief time. But

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exactly what we had when I went back and what we gained in that subsequent five years is a little fuzzy for me, but we had Maxwell House coffee, Shell Oil, all sorts of good things happened in that, a lot of Bristol-Myers accounts, Ban, et cetera.

Q. Did you work on any alcohol manufacturers accounts when you were at Ogilvy & Mather?

A. Yes, I worked on the Seagram brand, which was Lord Calvert.

Q. At the time you worked on the Philip Morris account for the Spud brand, who was the target market?

A. As I remember it, it was a while ago, it was a blue-collar brand, poor people.

Q. Was it targeted to any particular racial or ethnic group?

A. Well, I think it was beginning to be known even then that menthol cigarettes were big with black people.

Q. And that was a menthol brand?

A. Yes.

Q. And was there any age target for that

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brand?

A. I really can't remember, but I would guess it was people in their twenties. I don't remember. It was a very brief moment.

Q. And what did you do on that brand, or that campaign?

A. I supervised the copy.

Q. Were you involved in any research or testing of the advertisements?

A. Not particularly.

Q. Did Ogilvy & Mather later refuse to take tobacco accounts?

A. Yes.

Q. When was that?

A. It was when the Lancet article appeared linking cigarettes to lung cancer.

Q. And was that Mr. Ogilvy's decision?

A. Yes.

Q. Did you discuss that with him?

A. Yes.

Q. Can you relate to me your discussion?

A. I think by that time, my memory is that we had either resigned or lost Philip Morris, and the thought of getting another

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cigarette brand obviously was in the wind, and David told us all that we weren't going to do that, and so I asked him why.

Q. And what did he say?

A. And he said I want you to read this article. He said I don't want to be involved --

Q. And what did the article say?

A. -- in making people sick.

Q. And what did -- what was --

A. It linked cigarettes and lung cancer.

Q. And so what was your reaction to Mr. Ogilvy's decision?

A. I was very proud of him.

Q. Had the Ogilvy & Mather firm been approached by any of the cigarette manufacturers to handle any particular account?

A. I don't know.

Q. Since your brief work for Philip Morris on the Spud brand, have you done any tobacco work?

A. No.

Q. Why did you leave Ogilvy & Mather?

A. Well, at the time I didn't understand

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either, but there was a man named Chester LaRoche who ran a very small advertising agency which was going downhill pretty fast, and he asked Jim McCaffrey, who was an old friend of mine and a colleague at Ogilvy and had been at Y&R, if he would like to take it over, or buy him out or whatever the word is, and Jim came home and told me about it and we laughed, and why would we do that, and a few months later we did it.

Q. And that was in 1962?

A. Yes. Now we're getting to dates that I remember.

Q. Did you inherit some accounts or did you start pretty much from scratch?

A. It was roughly a $10 million agency, and there were two accounts that represented 80 percent of it.

Q. And who are the two accounts?

A. Norelco shavers and other products of that kind, and Hyram Walker, which was chiefly Canadian Club.

Q. So the two founding accounts, so to speak, of McCaffrey & McCall were Norelco and Hyram Walker?

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A. Right.

Q. And did you change the name of the agency in 1962 to McCaffrey & McCall?

A. No, we changed it I think two years later. At one point it was LaRoche McCaffrey & McCall. Mr. LaRoche was 72 years old when we went there, so a reasonable phasing out was understood.

Q. Mr. McCall, do you recall what year your discussion with Mr. Ogilvy was about the Lancet article linking lung cancer and cigarette smoking?

A. I was trying to think of that. It was prior to 1960. I'd have to find out when the article was.

Q. I take it you don't have a copy of that article?

A. No.

Q. I'd like to refer back to your resume which is in Deposition Exhibit 1. It states leading accounts for McCaffrey & McCall, Mercedes Benz North America, the Hartford Insurance Group, Tiffany & Company, Quaker Oats, Exxon, Norelco, Hyram Walker, JCPenney, et cetera.

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A. Yes.

Q. Were any of these accounts targeted at persons under the age of 18?

A. Yeah, Quaker Oats had at least one brand which was Life cereal which was targeted to children.

Q. And what age children?

A. Little.

Q. Little?

A. Yes.

Q. By little you mean under 10?

A. Well, when they -- yeah, I'd say 8 to 12; and their mothers.

Q. Was that product advertised on television?

A. Yes.

Q. Were there any other accounts that you had at McCaffrey & McCall that were targeted to persons under the age of 18?

A. Well, we invented a product called Hai Karate, which was a great money-maker for a period of time. And the idea of Hai Karate was to get adolescent and young men to use cologne, which they previously had not done.

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McCall

Q. Who manufactured Hai Karate?

A. Pfizer.

Q. When was that?

A. My guess would be 1970, but -- and the period after that.

Q. Did JCPenney have any products that were targeted to children that you worked on the advertising for?

A. Yeah, there were lots of children's clothes of various kinds. We made I think 110 commercials a year for Penney. A lot of stuff.

Q. And JCPenney made children's clothes, but were you advertising to the children or to their parents or mothers?

A. I think in the case of children's clothes as I described them, to their parents. In the case of blue jeans, which was a huge part of the Penney business, it was to adolescents and others.

Q. When do you recall that you started advertising blue jeans for JCPenney?

A. Let's just guess, mid-70s, but I don't really know. I remember what we did, but I don't know.

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McCall

Q. Okay, I'd like to discuss the work that you did on advertising campaigns that were targeted to children or adolescents, at least in part. Are there certain techniques that you used to target children or adolescents?

A. Well, I think the basic techniques are always the same. You know, solid research with the target audience to find out what interests and appeals to them that you can deliver.

Q. And when you say solid research, are you talking about both qualitative and quantitative research?

A. Yes.

Q. And the qualitative research would include focus groups?

A. Yes.

Q. What else?

A. Mall intercepts, IDIs.

Q. What are IDIs?

A. They are when you talk to just one consumer at a time.

Q. What does it stand for, individual?

A. Yeah, something like that.

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Q. Any other types of qualitative research that you would routinely use regardless of the product?

A. Those were the basic tools.

Q. And what are the basic types of quantitative research?

A. Well, you do large-scale telephone surveys in some cases. Although it's expensive, you do large-scale interviews.

Q. And are they personal interviews or --

A. Yes.

Q. And do you try and get a representative sample?

A. Oh, yes.

Q. And do you have experience yourself in doing both the qualitative and quantitative research?

A. I have experience in ordering it and helping supervise it and figuring out with the research department what it is we're trying to find out, and then looking at the results and presenting them to clients.

Q. So you would contract out the actual

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research to a research firm?

A. Well, you almost always do. You have a research department, in the case of McCaffrey & McCall, a substantial number of people, 15 or 20 professionals, but you contract the leg-work out, yes.

Q. And you have experience looking at data from the quantitative research?

A. Yes.

Q. And do you have experience analyzing statistical data?

A. I wouldn't say that was my long suit.

Q. What do you do differently in designing an ad campaign for children than an ad campaign for adults?

A. Well, as I say, the methodology in designing campaigns is very similar from one to the other, at least if you are of the Ogilvy school where you do the research and then you design advertising that stems from that research, and then you test that advertising to see if you got the point across.

Q. All right, so if I understand you, if

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you are designing an ad campaign for Life cereal, for example, primarily for 8 to 12-year-old children, then you would want to do qualitative research interviewing children and getting their reactions to proposed advertising copy, and then do quantitative research again, talking to children by phone or in person?

A. I doubt if you do quantitative research in that case.

Q. And why is that?

A. I'm not sure I know how to get to a bunch of eight-year-olds on the telephone.

Q. But you would do focus groups with the children?

A. Yes.

Q. And how would you select the media in which to advertise if your target group or target market was children?

A. For Saturday morning television, in those days at least, and I think to some extent still is ongoing.

Q. When were you working on the Life cereal account?

A. Well, we got Quaker Oats, again,

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let's guess, 1970. It was somewhere in the middle of the McCaffrey McCall experience.

Q. Is television the best medium for reaching children?

A. I think it depends what you are putting forth, you know, and what age children we're talking about.

Q. Okay, for reaching young children is television the best medium?

A. I think it's a good medium, yes.

Q. And so maybe I should be more precise. For reaching children under the age of 12, would you say that television is the best medium, or one of the best media?

A. I think television probably is the best medium until children begin reading magazines on a scale that 13-year-olds read Playboy.

Q. 13-year-olds read Playboy?

A. Read Playboy.

Q. When do you believe that children start reading magazines on any regular basis?

A. My best guess is at the age of 12. I mean, depends on the child, of course. I mean, I

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read Time Magazine when I was a little boy.

Q. Yes, probably unusual?

A. Yes.

Q. What is your basis for saying that 13-year-olds start reading Playboy?

A. Because adolescent boys read Playboy. They also read Sports Illustrated. I mean, you know, they're basic interests.

Q. Do you know what the mean or median age of readership of Playboy is?

A. No. I do know that something like 30 percent of their audience is under 18.

Q. How do you know that?

A. Because I think I prepared for my testimony to the Congress, and I read that.

Q. Do you know what the mean or median age of readership of Sports Illustrated is?

A. No. But again, it's a very large young adolescent audience.

Q. And by very large, what do you mean? What percentage?

A. I'd say 30 percent or more.

Q. Have you ever advertised a product targeted to adolescents in Sports Illustrated or

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Playboy?

A. Well, Hai Karate, those were major magazines for us. Certainly Sports Illustrated was. I have some dim memory that the president of that division of Pfizer didn't approve of Playboy.

Q. Is there anything else you would do differently in designing an ad campaign for children or adolescents as opposed to an ad campaign directed toward adults?

A. Well, your tone and voice, your tone and manner can change with any audience that you are after, although in some campaigns, like the Maxwell House coffee pot, there is no necessity to change at all. You've got an icon that works with everybody.

Q. What do you mean by tone of voice? I take it that's an established expression in the field.

A. Not particularly. It's my expression.

Q. Okay, what do you mean by it, sir?

A. If you are launching a product like Hai Karate, which was a gag in a way, but a gag

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they were going to pay $2.50 for, your are flip and funny, and we were flip and funny, and it worked.

Q. And what age group was the target market for Hai Karate?

A. I'd say 16 to 24.

Q. Did you advertise Hai Karate on television?

A. Yes, and print and radio. Anything else we could get our hands on.

Q. Was it advertised in magazines only, or also in newspapers?

A. There may have been coupon ads in newspapers, but it was basically magazines, radio and television.

Q. And what magazines was it advertised in other than Sports Illustrated?

A. I don't remember.

Q. Do you remember anything about the TV commercials for Hai Karate?

A. Yes.

Q. Tell me what they were.

A. Well, the whole thing was a spoof, because men's fragrances had historically

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promised that you would be handsome, debonair, and a great hit with ladies if you paid -- if you put these things on, like perfume ads. And kids didn't believe that and therefore didn't buy them. They were too expensive anyway. So we priced it at where they could afford it, and we said -- we took it to an extreme, that if you put this stuff on, you had to fight ladies off, and therefore you needed karate lessons, and that's what the commercials were based on. Ultimately sexist advertising.

Q. Was it successful?

A. Very.

Q. And how long was Hai Karate marketed?

A. For all I know it still is, but it was a heavily advertised and successful brand for about eight years.

Q. You said earlier that kids didn't believe the cologne advertisements. Are children generally skeptical of advertising?

A. Let's think about your question in a couple of ways. One is that they didn't believe the promise of the advertising, and the

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advertising wasn't aimed at them. So there was no way for them to connect with it. I think children are probably -- I don't know whether they're more or less skeptical about advertising than anybody else.

Q. Are people in general somewhat skeptical of advertising in your view?

A. I think they're somewhat skeptical until they see an advertisement about something that they want, and which tells them something that they're interested in.

Q. So if they have an interest in a certain product, then they will be more receptive to that, an advertisement for that product, is that what you're saying?

A. Well, for example most of the people I know say that they don't read direct mail. But if they get an L.L. Bean catalogue, and they're interested in the stuff that L.L. Bean sells, they're very interested in it.

Q. But if they get a catalogue for some products that they have no interest in, they will generally throw it in the trash, is that your experience?

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A. A lot gets thrown in the trash, that's for sure. That's why you try very hard to focus.

Q. And when you say try very hard to focus, you mean focus on particular market segments?

A. On audiences that are receptive.

Q. You said that in marketing Hai Karate, it was a key factor to price it in -- at an amount that the target group could afford, is that accurate?

A. Yes.

Q. And so price is always a key factor in a purchase?

A. No, not always.

Q. Not always. Is it generally a key factor in a purchase?

A. Well, I mean Mercedes Benz was our largest account, and I don't think price hurt them. It was a very high price.

Q. But there you were targeting people who could afford to spend a great deal on a car, correct?

A. Yes. Or lease one.

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McCall

Q. For people who are of more modest means, price is generally a key factor?

A. It's a factor, yes. But you don't have to look very far to find many examples where people buy things that common sense would say are pretty expensive, and luxuries; fashion being a great example, cosmetics being another.

Q. I wanted to return to your work for Hyram Walker, which you said was one of the two founding accounts for McCaffrey & McCall, correct?

A. Yes.

Q. And I assume since it was a major account for McCaffrey & McCall that you personally worked on that account?

A. Yes.

Q. And I believe you said that the brand for the account was, is it Seagrams?

A. Canadian Club.

Q. Canadian Club.

A. Was the major brand we worked on. We worked on others.

Q. What were the other brand you worked on?

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McCall

A. Hyram Walker cordials, various liqueurs.

Q. Any other brands?

A. Some dim memory of trying to launch a scotch at one point, but I can't remember if it ever got launched or what its name was. Those were the basic things we worked on.

Q. Did Hyram Walker ever launch a beer, Swans lager, I think it was called?

A. Not in my time.

Q. You don't recall that?

A. No.

Q. What was the target market for Canadian Club?

A. I would say it was people in their 30s, 40s and 50s, and I think they became concerned justifiably that they were getting old, you know, an old audience, which happened to all whiskey brands practically, so they tried to skew it younger a little bit.

Q. And when did Hyram Walker want to skew the brand younger?

A. Lord, let's guess 75. I don't know.

Q. And when you say skew younger, what

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age group was Canadian Club trying to reach at that time?

A. Well, I think they would have been happy to have an average age of 35 instead of 50 or older.

Q. Did you help them try to reposition the brand toward younger consumers of alcohol?

A. We tried to find appeals that would do that, and were unsuccessful.

Q. What did you try?

A. I think it was chiefly different kinds of styles of layout, you know, more modern, more -- they would run the same campaign for years and years and years, which was adventures that Canadian Club drinkers went on to Mount Kilimanjuro, et cetera, and we tried to break out of that format, but nothing worked as well as what they had.

Q. Did you work on the Hyram Walker account throughout the period of time that you were with McCaffrey & McCall?

A. Well, as I was either president or chairman, I worked on everything in some sense, sure.

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McCall

Q. Your resume states that McCaffrey & McCall advertising agency billed 300 million. Was that at the end of your time there, around 1988?

A. Yes.

Q. I think you said earlier that it was a $10 million agency when you started?

A. Yes, right.

Q. And a $300 million agency when you left?

A. Right.

Q. Approximately what percent of McCaffrey & McCall's billings in 1988 would have been to Hyram Walker?

A. Small. You know, small if it was still there. I can't remember whether it was still there, because they were bought by a big British conglomerate, and the account left.

Q. Oh, you mean McCaffrey & McCall was bought --

A. No, that was true too.

Q. Hyram Walker was bought?

A. Yes.

Q. When was that?

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A. Some time in the 80s.

Q. I take it early on, for McCaffrey & McCall, Hyram Walker accounted for as much as 50 percent or more of the billings?

A. I think 40 percent.

Q. By the way, do you still have any interest in McCaffrey & McCall?

A. No.

Q. So you don't receive any income, pension or anything from McCaffrey & McCall?

A. McCaffrey & McCall was sold as, I think I said, in 83. I had a five-year agreement to stay, which I did, and Saatchi & Saatchi were the purchasers, and I get a pension check from them.

Q. And has McCaffrey & McCall since then bought itself back from Saatchi & Saatchi?

A. No, it dissolved into Saatchi & Saatchi. I mean, they wrecked a good agency, off the record.

Q. Okay, so you get a pension there from Saatchi & Saatchi?

A. Yes.

Q. Do you have any stock in Saatchi and

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Saatchi?

A. No.

Q. What was the target market for Hyram Walker cordials?

A. It was middle to affluent adults, 30 to 60, with a slight skew toward women.

Q. Is it typical in the advertising business to target one sex or the other or one racial group or another or one age group or another?

A. It can be, sure.

Q. Who determines the target market?

A. I think it's done as a partnership with the client. Depends on the client, of course. Years ago, agencies did almost all the marketing thinking, then the clients realized that marketing was what they did, so they began to hire good people to do it, and so it's less of an agency decision now, though in good relationships, it's a partnership.

Q. You mentioned earlier the importance of focus, and why is that important? It seems to be a matter of common sense, but in your view, why is it important?

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McCall

A. Well, most advertising thinking is a matter of common sense. It's not very complicated. If you have a small brand that is specifically targeted for an audience, then you focus on that. If you have a large national brand, you very often have a large national campaign which lacks focus except that it's generally acceptable, and then you break down segments of the population, blue-collar, black, women, whatever, and do specific campaigns that are more slanted toward them.

Q. And that is a typical way of doing the marketing?

A. That is a way, if you have a very large account.

Q. And I take it that no matter how good of an advertiser or marketer you are, you can never reach a hundred percent of your target group?

A. Well, I think that's right.

Q. What would be considered a good reach in terms of percent, in your business?

A. It's almost impossible to give an answer to the question, because it depends what

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you're trying to do. A client of ours now is the Southern Company, which is the largest utility in the United States, or the largest provider of electricity, and nobody knows who they are. And we have a target whom we'd like to tell who they are. Now, in that case, we're not trying to reach a huge proportion of the people in the United States, but we would like to get to let's say 40 or 50 percent of our target audience 15 or so times.

Q. And you would consider that a huge success if you could reach 40 or 50 percent of the target?

A. For that client, with their budget, yes. That would not and huge success for Coca-Cola.

Q. Is it also true that advertising and marketing will always reach some members who are not a part of the intended target group, or some people who are not members of the target group?

A. Short of direct response, I think that's generally true, yeah, there will be some people.

Q. And direct response is where you send

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something to specific individuals in the mail or you hand it to them?

A. Right.

Q. So short of direct response, one can never achieve a perfect fit between the advertising and marketing and the market segment, or the target market?

A. It's not given to perfection. However, you try very hard not to waste your client's money, so you try to keep it as --

Q. Tailor it?

A. As focused as you can.

Q. I had read some article about Hyram Walker launching a beer called Swans lager in 1986 and using what was then reported to be an innovative approach of giving out samples in bars and grocery stores. Does that refresh your recollection at all?

A. No.

(Recess taken.)

BY MS. BIXENSTINE:

Q. Mr. McCall, was McCaffrey & McCall ever approached by any cigarette company or tobacco company to handle its advertising?

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A. Well, we had made it publicly clear, at least within the business, that we would not handle a cigarette brand.

Q. That's you and Mr. McCaffrey?

A. Yes.

Q. And when did you do that?

A. Right at the beginning.

Q. And how did you do that?

A. It's a small business. You know, we just -- our friends knew what they thought, and a lot of people. The trade press knew, Phil Doherty, Jim O'Gara, all those guys.

Q. Those gentlemen you referred to, Jim O'Gara and Phil Doherty, are they people in the trade press?

A. Phil Doherty was the New York Times advertising columnist, and Jim O'Gara was editor of Advertising Age.

Q. Was it your position at that time, 1963, when you started McCaffrey & McCall, that cigarette advertising should be banned?

A. No. I think our position was we didn't want to do it.

Q. And the basis for that was the same

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as what you told me was the basis for Mr. Ogilvy's refusal to do tobacco, which was the link between cigarette smoking and lung cancer that had been reported?

A. Well, first it was reported in the Lancet, and it seemed to me that every year there was more and more evidence.

Q. More and more evidence that was reported in the media?

A. Right.

Q. Is it your position now that cigarette advertising should be banned?

A. No.

Q. Is it your position now that there should be restrictions on cigarette advertising?

A. Yes.

Q. Okay, and what restrictions do you support?

A. Well, I think that they have to get serious about advertising cigarettes in media that, although they have a sizeable audience that isn't young, has a sizeable audience that is.

Q. So where would you draw the line?

A. Sports Illustrated, Playboy. I would

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draw the line at outdoor posters that are near schools, you know, all the usual things.

Q. All right. The cigarette companies currently have an advertising code which I know you are aware of, that --

A. Are they? Excuse me.

Q. -- that provides that there will be no billboards within 500 feet of any elementary school or high school. I take it that you want something more stringent than that?

A. Yeah, I think outdoor is a particularly tricky question, because it's virtually impossible to control children seeing. It's ubiquitous.

Q. So would you ban outdoor advertising of cigarettes altogether?

A. I think that probably would be a good idea.

Q. And that even though that would have a substantial effect on reaching lawful age consumers, correct?

A. Yes.

Q. Is it your belief or your expert opinion that billboard advertising for cigarettes

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can persuade a child who wouldn't otherwise smoke to smoke?

A. I think that it's part of a large world in which they live. We were noticing coming in from the Triboro Bridge, for instance, from the airport the other day, that you are greeted to New York by Marlboro and other cigarette companies. But it's one part. It isn't the, you know, if the Marlboro cowboy, for instance, is in many magazines, if it's on outdoor posters everywhere, if it's in stadia everywhere, it becomes part of the landscape. It becomes part of a child's experience.

Q. And do you think that that can cause a child to start smoking?

A. I think it's a big factor, sure.

Q. What do you think is a more powerful influence on a child, a cigarette billboard advertisement or seeing their parents smoke?

A. I don't know how to rank order them. I think both are unfortunate.

Q. What do you think is a more powerful influence on a child, a cigarette advertisement or seeing their best friend smoke?

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A. Well, there is no question in my mind that cigarette advertising has a profound effect, and there is no question in my mind that peer pressure is part of an adolescent's life, but I don't know which is -- I do think they are linked though. Excuse me, I just thought I'd finish the thought, that the peer pressure and the advertising are all part of the same web, that there would be less peer pressure if there was less advertising, because what causes their little friend to say, have a smoke, except that they've seen the Marlboro stuff.

Q. Do you have any empirical evidence to support your belief that the advertising influences the peer pressure, or is linked to the per pressure?

A. Just my opinion.

Q. Okay. Have you looked at any of the literature from any of the countries in which cigarette advertising bans have been imposed?

A. I read about them, and it seems to me there was a very controversial one in Scandinavia, for instance, where the, as I remember it, the tobacco companies funded the

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research. It was found to be flawed by a lot of people, so I think it's kind of a murky thing. That's my memory of it.

Q. Are you aware of any cigarette advertising ban that has been imposed in any country that has changed whatever the consumption trend was that was in place at the time the ban was imposed?

A. The thing I'm most familiar with is the California initiative, which was not a ban, and if you -- you haven't asked me, but I think that that is what I would do first and foremost, is tax the cigarette companies heavily, and use that tax money to run advertising about the health risks. And that worked in California, until they stopped it.

Q. What is your evidence that it worked in California?

A. I have a friend who was heavily involved in it, and he has sent me graphs and evidence from the state that there was a decline in smoking.

Q. Decline in smoking overall or a decline in smoking among minors?

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A. I think both.

Q. And during what years was there a decline?

A. I haven't got the date straight, but I think the whole thing rolled out in a major way for only about a three year period, and I think after the first year, there was a significant achievement of dropping cigarette smoking, and that lasted for two years. And when they took the money and spent it on other good causes, it went back up again.

Q. Okay. Do you attribute this asserted decline in cigarette smoking among adults and minors in California to the increase in price from the tax, or to the corrective advertising or both?

A. Well, I think it was the corrective advertising, because the tax I think remained, and they just took the tax money and spent it on other needs of the state.

Q. Were you involved in that corrective advertising campaign?

A. No.

Q. Who was the friend that you are

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referring to?

A. He is a man named Paul Keye who used to work with me at Ogilvy, and he has run his own advertising agency in Los Angeles for years.

Q. And how do you spell his last name?

A. K-E-Y-E.

Q. And is he involved in the corrective advertising campaign in California?

A. Was he, or is he? Because I don't think there is one now.

Q. Okay, was he involved in it?

A. Yes.

Q. And what was his role in it?

A. He ran the agency that produced the advertising.

Q. And what is the name of that agency?

A. I think it's called Paul Keye. It could be Keye Advertising.

Q. Do you have copies of those graphs that he sent you?

A. No, but I could get them.

Q. So just to make sure that I understand your position, your position is that you don't think cigarette advertising should be

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banned altogether, but there should be more significant restrictions imposed on advertising?

A. Yes, including on the creative part.

Q. Okay, and so what are those restrictions that you favor?

A. Well, I think one of the suggestions has been to make them all type, which is not a bad idea, because the imagery of Virginia Slims, for instance, when you see those terrific looking young ladies who are thin, it has effect on -- it tells a story.

Q. Who does it -- it has an effect on children?

A. On young -- yeah, adolescent girls and young women.

Q. And when you say young women, you mean women under the age of 18?

MS. FLOWERS: Object to the form.

A. No, adolescent girls is women under 18. Young women is --

Q. Is there anything unethical or unlawful in your view in reaching women who smoke who are over the age of 18?

A. What were your two words, unethical

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or illegal?

Q. Yes.

A. Well, it's not illegal. Ethics are in the mind of the beholder, I suppose.

Q. Do you think it's unethical?

A. Well, I wouldn't do it.

Q. And that is because of the health risks of smoking?

A. Yes.

Q. But do you believe that people who are 18 and up can make a choice for themselves whether to smoke or not to smoke?

A. They are certainly in a far better position than young people are, kids are.

Q. You are not in favor of a ban of the sale of cigarettes in this country, are you?

A. No.

Q. And why is that?

A. Because I don't think it would work, and we tried it with alcohol, and it certainly didn't work.

Q. Have you ever smoked?

A. No.

Q. Has anyone in your family ever

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smoked?

A. I have six sons, and three of them smoke.

Q. Do you know at what age they started smoking?

A. Yeah, when they were 13, 14. I didn't know it at the time.

Q. Did they start smoking regularly at that time, or just experimenting when they were 13 or 14?

A. I'd have to do a piece of research among them, but I would guess that by the time they were 15, they were smoking regularly.

Q. And what is your basis for saying that?

A. Just talking to them after the fact.

Q. Have you discussed with them why they started?

A. No.

Q. Have you encouraged them to quit?

A. Oh, yes.

Q. Have any of them tried to quit?

A. Oh, I think always. Yes, they're always trying to quit.

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Q. How old are your sons?

A. The youngest is 26 and the oldest is 40.

Q. And how old are the ones who smoke?

A. Let's guess, 32, 35, and 40.

Q. Has anyone in your family ever had any illness that you attributed to their smoking?

A. No. Oh, well, immediate family, no, but I had two first cousins who were my age who died in their early 60s, which seems to be the prime age to die. And I had an uncle who, by marriage, he married my aunt, and he was an account executive on Lucky Strike, ironically enough, and he died of cancer in his 50s.

Q. What type of cancer?

A. Lung cancer.

Q. And what type of cancer did your cousins have?

A. Lung cancer.

Q. And they were all long-term smokers?

A. Yes, heavy smokers.

Q. And you attributed all of their deaths to cigarette smoking?

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A. I think it's a logical conclusion, yes.

Q. You've said that you refuse to handle tobacco work because of the health risks attributed to smoking, and so I take it that that was an ethical objection you had to working on tobacco, is that right?

A. Yes.

Q. Did you have any ethical concerns about doing work for an alcohol manufacturer, namely Hyram Walker?

A. No.

Q. Okay, you are aware that alcohol has been linked to many serious diseases, correct?

A. Abuse of alcohol, yes.

Q. And those diseases include cirrhosis of the liver?

A. Yes.

Q. And various types of cancer such as laryngeal cancer and oesophageal cancer, correct?

A. I didn't know about those, but I'll take your word for it.

Q. Have you heard that women who drink

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excessive amounts of alcohol during their pregnancy often have children who have birth defects?

A. Yes.

Q. Okay. And are you aware that alcohol has been linked to cardiovascular disease?

A. Again, I think it's always excessive use.

Q. You have heard that there are thousands and thousands of deaths each year due to drunk driving?

A. Yes.

Q. And I'm sure you are aware that people who become intoxicated sometimes become violent?

A. Yes.

Q. And people who are intoxicated have impaired judgment?

A. Yes.

Q. And despite the laws banning the sale of alcohol to persons under the age of 18, and I think now to persons under the age of 21 in most states, there is a high percentage of persons under the age of 18 or 21 who drink alcohol?

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A. Yes.

Q. Two of the documents that were produced by your counsel to me were youth risk behavior survey reports from Florida. Have you reviewed those, Mr. McCall?

A. Yes.

MS. BIXENSTINE: I'd like to mark these as McCall Deposition Exhibits 2 and 3. We'll mark the 1991 Florida Youth Risk Behavior Survey Report, which is dated February, 1992, as Exhibit 2, and the Florida Risk Behavior Survey Summary Report dated March, 1994 as Exhibit 3.

(McCall Exhibit 2 for identification, Florida Youth Risk Behavior Survey Report.)

(McCall Exhibit 3 for identification, Florida Youth Risk Behavior Survey Summary Report.)

Q. Mr. McCall, I'm going to hand these Deposition Exhibits to you, and I believe you said that you have seen them before.

A. I have read a lot of stuff very fast, so --

Q. Looking at Exhibit 2, does that look

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familiar to you?

A. It looks familiar, but I don't know if I have read it.

Q. All right, were these documents something that you think that counsel for the State of Florida sent you?

A. I think so, but as I say, I've gotten an awful lot of stuff, and it all looks the same.

(Recess taken.)

BY MS. BIXENSTINE:

Q. Mr. McCall, I wanted to direct your attention to page 24 of Exhibit 2. Exhibit 2 is a report for the 1991 Florida Youth Risk Behavior Survey, and it was sponsored by the Florida Department of Education's Prevention Center in Tallahassee, Florida and the Centers for Disease Control in Atlanta, Georgia.

Is this the type of report that you intend to rely on in your testimony in this case?

A. I've got to confess, I don't think I've seen -- certainly haven't seen this page before.

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McCall

Q. Okay. Do you consider reports by the Centers for Disease Control and the Florida Department of Education to be reliable?

A. I would think so.

Q. All right. Directing your attention to page 24, the last bullet point, are you with me?

A. Yes.

Q. Just above the graph at the bottom, it states, 30 percent of all students engaged in heavy drinking (five or more drinks in a row within a couple of hours) during the last month (27 percent for females and 33 percent for males). Were you aware of that, Mr. McCall?

A. Just only in general terms, yes.

Q. Do you have any opinion about whether that amount of under-age consumption of alcohol is about the same as it has been for a number of years, whether it's increased or decreased?

A. I don't know, because I haven't got any statistical proof of it. There certainly was heavy drinking when I was a boy. On the other hand, the female percentage seems much higher than it would have been.

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Q. Than in your personal experience?

A. Yes.

Q. And let's see, you would have been a teenager in the late 40s?

A. In the 40s.

Q. Turning just briefly to Exhibit 3, which is the 1994 Florida risk behavior survey summary report, and directing your attention to page 16, I think it's just the next page. Directing your attention to the first bullet point that states 35 percent of males and 26 percent of females had three or more drinks of alcohol in a row on one or more of the past 30 days. The percentage of students who drank heavily increased from the 9th grade (22 percent) to the 12th grade (38 percent). Do you see that?

A. Yes.

Q. And then moving down to the next bullet point, 37 percent of the students in the survey had ridden in a car or other vehicle driven by someone who had been drinking alcohol. Do you see that?

A. Yes.

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McCall

Q. Do you have an opinion one way or the other about the role of alcohol advertising, if any, in under-age consumption of alcohol?

MS. FLOWERS: I'm just going to interpose an objection that it is beyond the scope of the Rule 26, but go ahead and answer.

A. My guess is that beer advertising probably has a considerable effect on all of this. I'm not sufficiently up to date on what other alcohol beverage advertising might be, but beer advertising, I mean, the famous frogs, et cetera.

Q. The Budweiser frogs?

A. They're certainly very appealing to young people, and anybody else for that matter.

Q. So your view that beer advertising is an influence on under-age consumption of beer is based on what, your expert view of commercials and advertisements that you see?

MS. FLOWERS: Object to the form.

A. It's certainly based on my opinion, yes, particularly -- yes.

Q. Do you have any view about whether tobacco advertising has any greater or lesser

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influence or under-age consumption of cigarettes than beer advertising has on under-age consumption of beer?

A. Well, I think the dramatic example of Camel, which went from a cigarette that was just lying there, particularly as far as young people were concerned, to a very significant brand with a high percentage of young smokers, that definitely is one example where cigarette advertising set out to do something and it did it.

Q. When you say young people, what age group are you referring to?

A. I think it's both adolescents and young --

Q. Young adults?

A. Yes.

Q. Do you know what Camel's market share is among young adults age 18 to 24 as compared to its market share among those under 18?

A. Not specifically, no. I just know it's significant compared to what it was before they began Joe Camel.

Q. Do you have any evidence that shows

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that overall consumption of cigarettes by persons under the age of 18 increased after the Joe Camel campaign?

A. I'm sorry --

Q. In other words, do you have any evidence to show that the Joe Camel campaign caused more children to smoke, or children to smoke more? In other words, increased overall consumption by children of cigarettes?

A. No. I think the only figures I've seen are about what happened to the Camel brand among young people.

Q. So the only figures you've seen relate to brand switching?

MS. FLOWERS: Object to form.

A. Well, not necessarily. I mean, you got to start people.

Q. But I'm asking you, do you have any evidence to show that Camel got kids who weren't already smoking to smoke?

A. I don't have any evidence, or at least I haven't seen any evidence, but I would think that some other -- some other evidence, like the vast popularity of Joe Camel with little

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kids and stuff, would suggest that it helped them get non-smokers to smoke.

Q. Okay, appeal does not necessarily translate into purchase intent, isn't that right?

MS. FLOWERS: Object to the form.

Q. The question could be better phrased, so let me follow your counsel's suggestion.

Isn't it true that the fact that children may like an ad doesn't necessarily mean they're going to use the product?

A. Not necessarily, but it doesn't hurt it.

Q. Okay. So the answer is it doesn't necessarily mean they will use the product? The fact that they like the ad doesn't necessarily mean that they will use the product?

A. Not necessarily, but one of the purposes of much advertising is to start by making people like the brand and like the advertising.

Q. So that's one step, but there are a lot of other steps to go, is that right?

A. Yes.

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McCall

Q. Let me show you some statistics from the government on -- let's mark this as McCall Deposition Exhibit number 4?

(McCall Exhibit 4 for identification, Statistical Report.)

Have you had a chance to take a look at that, Mr. McCall?

A. Yes.

Q. All right, this document is a table from a report prepared by the government, and the source is SAMHSA Office of Applied Studies from a survey done by the government called the National Household Survey on Drug Abuse. And this table shows that for the 12 to 17 age group, the percentages recording the use of cigarettes any time in the last month was 29.4 percent in 1985; 22.7 percent in 1988; 22.4 percent in 1990; 20.9 percent in 91; 18.4 percent in 92; 18.5 percent in 93; 18.9 percent in 94; and 20.2 percent in 1995. Do you see that?

A. Yes.

MS. FLOWERS: Excuse me, can I just ask what report this is from?

MS. BIXENSTINE: I believe it's

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from an MMWR report, but I'm sorry that I didn't write that down.

THE WITNESS: What is MMWR?

MS. BIXENSTINE: Morbidity Mortality Weekly Report, published by the Centers for Disease Control.

MS. FLOWERS: And it appears to be 96.

MS. BIXENSTINE: Yes. I'm sorry, Jodi, I can check on that.

Q. In any event, assuming these statistics are accurate, this shows that there has not been an increase in smoking among 12 to 17-year-olds overall since the Joe Camel campaign was launched in 1988, is that right?

A. That is correct, yes.

Q. So does this influence your opinion at all about the effectiveness of the Joe Camel campaign on getting minors to smoke?

A. Well, Camel, in spite of its gains, is still a small player, so it wouldn't necessarily affect overall statistics like this.

Q. Marlboro has the lion's share of the under-age market?

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McCall

A. The lion's share of --

Q. Government statistics.

A. Lion's share of all cigarette smoking, yes. And I think the Marlboro Man is at least affective an icon for children as Joe Camel.

Q. What makes the Marlboro Man an effective icon for children, in your view?

A. Because I think one of the brilliant things about it is that it cuts across all gender questions or race questions; it cuts across international barriers; it cuts across age; it's just a very powerful piece of symbolism.

Q. It's not your testimony that it's more appealing to children than to adults, is it?

MS. FLOWERS: Object to the form.

Q. Did you understand my question?

It's not your testimony that the Marlboro Man appeals more to children than to adults, is it?

MS. FLOWERS: Object to the form.

Q. Go ahead.

A. As I said, I think it's a universal

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icon.

Q. So you think it's equally appealing to children as to adults?

A. At least.

Q. Have you ever looked at any evidence relating to the appeal of the Marlboro Man to children versus adults?

A. Not in those terms, but I am almost sure that there was a survey recently in USA Today that showed the appeal of the Marlboro Man to children, which was very potent.

Q. And I believe the survey to which you are referring showed that although persons under the age of 18 like the Joe Camel ads, it's not their preferred brand, correct?

A. Well, that I thought was very funny when I read it, because the weight of Marlboro advertising and general, you know, presence, is so overwhelming that it's kind of silly to draw the conclusion that on the rather narrow thing of who likes what, that if one is spending X amount and the other is spending 10X amount, that 10X is going to win.

Q. Okay. So the fact that a minor may

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like Joe Camel advertising is not going to be dispositive in their purchase intent, correct?

MS. FLOWERS: Object to the form.

A. I wouldn't say that.

Q. What would you say?

A. I would say that the Joe Camel advertising's appeal to children is part of -- is one of the factors in making young people smoke Camel cigarettes.

Q. And the other factors would be peer influence, family influence, curiosity, rebellion, do you agree with all of those?

MS. FLOWERS: Objection. Compound.

A. Yeah, I wouldn't have said it that way.

Q. What do you think are the other influences in a child deciding to smoke?

A. Well, I think one of the things that experience has proven is if you tell children that something is just for grown-ups, that it's sinful, and so forth, they're very apt to like the idea of trying it.

Q. You're not suggesting -- are you

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suggesting that that is what cigarette advertising does?

A. No, I don't think cigarette advertising does it, but the world does it.

Q. So are you suggesting that we should stop doing that?

A. I think there are smarter ways to talk to kids.

Q. What do you think are the smart ways or effective ways to talk to kids to dissuade them from smoking?

A. Well, the way they did it in California was to show the tobacco business and the executives who run it as a force, if not a conspiracy, to get kids to smoke for their profit.

Q. And you thought that was effective?

A. It was effective.

Q. With kids?

A. Yes.

Q. And do you intend to rely on any of that data in your testimony in this case?

MS. FLOWERS: I'm sorry, what data?

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McCall

MS. BIXENSTINE: Data from California.

A. I think it's interesting, because it's one of the few things that it reversed.

MS. BIXENSTINE: Jodi, I will make the request that if you intend to have Mr. McCall rely on that data for his testimony in this case, then I would like to be able to get that data and have a chance to question on it.

MS. FLOWERS: I'd like to get that data too. I honestly don't have it myself, but perhaps if he can tell us exactly what he's talking about, we can identify it and try to locate it.

THE WITNESS: I surprised everybody. Sorry, Jodi.

Q. Are you aware that the Centers for Disease Control has estimated over a hundred thousand deaths per year in the United States attributable to alcohol consumption?

A. I did not know that.

Q. Why is it that you have an ethical objection to doing advertising work for tobacco companies, but not to doing advertising work for

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alcohol manufacturers?

A. I may be repeating myself, but if you smoke as most people smoke, which is a pack a day, let's say, you are putting yourself at risk of very serious disease such as cancer or emphysema, which is almost worse. If you drink moderately, which is the recommended way to drink, which I have done all my life, it adds pleasure to your life, it doesn't endanger anybody, and they are two totally different things to me. And of course I love the French research which says that if you drink wine, you are better than if you don't.

Q. In light of the government statistics attributing over a hundred thousand deaths per year to alcohol and the evidence associating alcohol with numerous life-threatening diseases such as cancer and cardiovascular disease and cirrhosis of the liver and the deaths due to drunk driving and the birth defects from women who drink alcohol during their pregnancies and the large percentage of under-age drinkers as evidenced by the Florida Youth Risk Behavior Reports that we just looked at, don't you have a

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concern about advertising alcohol?

MS. FLOWERS: Assuming the numbers are correct.

A. As I said, no, I don't. Abuse of alcohol is a problem, which hopefully is being addressed in a lot of ways, but the regular use of alcohol is not a problem.

Q. Well, I'm wondering where you draw the line. If there are a hundred thousand deaths attributed to alcohol each year by the government, what would the number have to be before you would decide that you couldn't advertise alcohol?

A. Well, the magnitude of deaths attributed to cigarette smoking is far higher than that, far higher than that.

Q. So I'm wondering where you draw the line. A hundred thousand deaths isn't enough for you to stop working on an account, but what number is?

MS. FLOWERS: Object to the form.

A. I have no answer to that.

Q. Did McCaffrey McCall handle the Bacardi account at any time?

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McCall

A. I worked on rums of Puerto Rico at Ogilvy. I will tell you what happened. In my last years at McCaffrey & McCall, Saatchi & Saatchi put another agency into McCaffrey & McCall which had Bacardi.

Q. Did you ever work on that account?

A. No.

Q. Do you know if McCaffrey & McCall still handles that account?

A. There is no McCaffrey & McCall.

Q. Do you know who is handling the Bacardi account now?

A. No.

Q. I want to mark four recent Bacardi advertisements, and I want you to give me your expert opinion about whether these are targeted to persons under the age of 21.

MS. BIXENSTINE: I'd like to mark this ad as Exhibit deposition 5.

(McCall Exhibit 5 for identification, Bacardi advertisement.)

We'll mark this one as Exhibit 6.

(McCall Exhibit 6 for identification, Bacardi advertisement.)

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McCall

The next one is Exhibit 7.

(McCall Exhibit 7 for identification, Bacardi advertisement.)

And the last ad as Exhibit 8.

(McCall Exhibit 8 for identification, Bacardi advertisement.)

Q. Mr. McCall, I've just handed you four recent advertisements for Bacardi rum. I will ask you if you have ever seen any of these advertisements before.

A. No.

Q. Can you look at an advertisement and tell simply by looking at the ad who the intended target market is?

MS. FLOWERS: I'd like to interpose an objection I think to the form here, just because I think we need some clarification about what we mean by target. Are you talking about the intent of the ad or the appeal of the ad?

MS. BIXENSTINE: Well, I am using target in the same way we've been using it all morning, when he was talking about target market for Life cereal and --

MS. FLOWERS: So perhaps it's the

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intention of the ad?

BY MS. BIXENSTINE:

Q. Well, let me ask you, Mr. McCall, when you use the word target market, what do you mean?

A. Who was the ad supposed to appeal to.

MS. FLOWERS: One final objection, I just object to the line as outside the scope. But go ahead.

Q. Can you tell by looking at any ad, Mr. McCall, who the target market is?

A. I'd say in general you have a pretty good idea.

Q. Okay, looking at Deposition Exhibit 5, which is a Bacardi ad picturing a walrus with sunglasses and a hat, and it looks like a bright yellow boombox with some suntan lotion, do you have any opinion to a reasonable degree of certainty as to what the target market is for this advertisement?

A. Well, my hopefully educated guess is that it's the college crowd. It looks like Fort Lauderdale is the dream, I suppose.

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McCall

Q. Do you believe that this ad would be appealing to persons under the age of 18?

A. Well, walruses are cute, but I do think that my guess is that it's for college students. That's what the symbolism is. I mean, kids aren't going to beaches with funny hats of this sort.

Q. What would you point to about this ad to support your opinion that it's targeted to college-age consumers?

A. Well, it looks like a beach, as I said, Fort Lauderdale kind of situation, where they are off on their spring break or whatever, with a hat and sunglasses and suntan lotion and boombox.

Q. Do you think this is targeted to persons then 18 to 22?

A. That's a fair guess.

Q. Do you have any objection to the ad, given that I believe in most states, alcohol is prohibited for sale for anyone under 21?

A. I wouldn't have done this ad.

Q. For that reason?

A. Yes.

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McCall

Q. Let's turn to the next ad in this set, which is Exhibit 6. This is a Bacardi ad featuring dalmation dogs, some with sunglasses, and it looks like some of them are wearing Hawaiian-style shirts.

Do you have an opinion as to the target market for this advertisement?

A. I think it's a little less clear than the other one was, but it's one of the thousand and one dalmation ads done last year. But it's got the same slightly goofy, you know, college-age feel to it.

Q. So again, you think this is targeted to the college crowd?

A. Yes.

Q. Was 101 Dalmations a movie for children?

A. Family movie, I think is what they call it.

Q. It wasn't a movie for college-age students, was it?

A. Certainly not specifically, no.

Q. What is the basis of your opinion that this ad featuring dalmations is targeted

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toward college-age students?

A. Well, it's the same beach scene, the same tropical shirt, as you said, the sunglasses.

Q. Anything else?

A. No.

Q. Directing your attention to the third ad in the set which has been marked as Exhibit 7, how would you describe this ad, Mr. McCall?

A. I would think that that was far less clear who the target audience is. Probably it's, you know, meant to appeal to young adults, people going on vacations.

Q. Can you describe it for the record? I don't think I can do it justice.

A. I'm not sure I can. I'm not sure it deserves justice. But it's a sort of a pyramid scene with Club Med kind of huts in the middle of it and guys on camels going across the desert.

Q. This advertisement has a slogan at the bottom, taste the feeling.

A. Yes.

Q. What do you interpret that as meaning?

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McCall

A. I imagine it is supposed to say that if you have a drink of Bacardi, that all of the pleasant things of being on a vacation and stuff, you will then have the feeling of.

Q. Are there any colors used in advertisements that are particularly appealing to teenagers or younger people than to older people?

A. If there are, I don't know them.

Q. Moving to the last advertisement in the set which has been marked as Exhibit 8, which has the headline New Bacardi Spice, and at the bottom says, as good as it gets, and it portrays someone playing an electric guitar.

What is your opinion as to the target market for this advertisement?

A. There again, I'd say they're introducing a new product to young adults. I mean, it's clearly not an adolescent who is playing the guitar, it's, you know, a 25, 30-year-old musician.

I would like to add, if I can, that I never had anything to do with Bacardi, so I am not specifically expert on this.

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Q. I understand that.

Mr. McCall, when you testified in 1989 before Congressman Lukens' committee on the subject of cigarette advertising, you didn't mention to that committee that you had done work for an alcohol manufacturer, did you?

A. I don't know.

Q. Was that a deliberate omission on your part?

A. I don't know whether I did or not. But it certainly wasn't a deliberate omission.

Q. It was not?

A. No.

Q. So you make no apologies for doing work for alcohol manufacturers?

A. None.

Q. I believe you said that you left McCaffrey and McCall in 1988 because you had a five-year agreement with Saatchi & Saatchi after they bought out McCaffrey & McCall, is that right?

A. Yes.

Q. And why did you go to Sawyer & Miller?

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McCall

A. Well, I retired first, for about two months, and I was asked if I would write speeches for Michael Dukakis, which was a fun assignment. And instead of going to Florence with my wife, I went into a basement in Boston and wrote speeches for Michael Dukakis, which he never gave.

Q. Who hired you for that? His campaign?

A. Yeah, I was recommended to the campaign. I wasn't hired, I wasn't paid.

Q. Okay, that was pro bono?

A. Yes. And I had known David Sawyer slightly before, I had known Scott Miller, I met Scott Miller during the campaign, and I realized I probably didn't want to retire, and I've always had a long, deep interest in politics and government, and they did a lot of stuff like that in addition to the fact that they -- you know, at that point they didn't even -- they did some advertising, not much. And I didn't want to do -- I didn't want to run an advertising agency again, I'd done that. So I thought that could be fun, so I told them I'd like to be their house writer, and I went to work for them.

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McCall

Q. At the time you joined Sawyer & Miller, a gentleman by the name of Lawrence Walsh also joined the firm, is that right?

A. Larry Walsh?

Q. Larry Walsh.

A. Yeah, roughly the same time.

Q. Okay, you didn't make a joint decision?

A. Oh, no, I didn't know him before that.

Q. You didn't know him before that?

A. No.

Q. Did you get to know him as a result of working together at Sawyer & Miller?

A. Slightly.

Q. And he used to be at Hill & Knowlton, is that right?

A. That's how slight it was. I'll take your word for it. He is a professional PR man.

Q. Okay, you didn't know what firm he worked for?

A. No.

Q. You are familiar with Hill & Knowlton?

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A. Yes.

Q. Is it your view that it's one of the most respected PR firms in the country?

A. No. It may be again, but it went into a very deep decline there for a while, which you probably know.

Q. In the 1950s, was it the most respected PR firm?

A. It was big. I don't know a lot about PR.

Q. You don't know a lot about PR?

A. No.

Q. It was big and respected in the 1950s?

A. Yeah, I would say so.

Q. In the 1950s?

A. Yes.

Q. When did it go through a decline?

A. The first time I ever paid much attention to them was at Sawyer & Miller, and that was when they had big problems, and they did a series of things that got them into public disrepute at least, like working against abortion for the Catholic bishops, which caused a lot of

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their women executives to either leave or complain, and there were it seemed to me a series of things.

Q. So they fell into some disrepute in the late 80s, when you went to Sawyer & Miller?

A. That's when I first noticed it, yes.

Q. What were the major accounts you worked on while you were with Sawyer & Miller?

A. Well, off and on I worked for lots of the things that were there. I worked on Vargas Llosa's campaign for president in Peru, which was a lot of fun, not very successful. I worked on the Proprietary Drug Association. That's not the right name, but it's something like that.

Q. What is that?

A. It's a collection of the drug companies like Pfizer and Merck and so forth. It's their trade association.

Q. And what did you do for them?

A. I wrote some ads for them, tried to help their strategy. One of the recommendations we made is to stop using drugs, or stop using manufacturers, and say that they were pharmaceutical research companies, which they've

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now done, because that's really what they are. You know, the making of the pills, not the point. It's finding the cure to the disease.

Q. What were the other major accounts you worked on?

A. I worked on the Republic of Colombia off and on.

Q. What did you do for the Republic of Colombia?

A. I wrote ads as necessary, not very much of them.

Q. What type of ads?

A. They were ads suggesting that the government of Cesar Gaviria was afflicted by the drug cartels, it wasn't a creature of them, which was true.

Q. What is your basis for saying that?

A. Well, I know them very well, and we now have a partner named Miguel Silva who was chief of staff to Gaviria, who is now head of the Organization of American States, that is Gaviria is, and he was -- Miguel was his chief of staff there too, and a very respected man.

Q. And that is one of your partners at

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Shepardson Stern?

A. Yes.

Q. So I take it you didn't have any concerns about the integrity of the government officials in Colombia you were dealing with?

A. None. Couldn't say that today.

Q. During what period of time were you working with the Republic of Colombia?

A. Dates, as can you see, are not my expertise. I would say from 1988 to 90.

Q. Am I accurately reading into your comment that you would not do work today for the government of Colombia?

A. Yes.

Q. Did Sawyer & Miller run an ad campaign for Drexel Burnham Lambert while you were associated with them?

A. They did that before I got there.

Q. Was BAT a client of Sawyer & Miller while were you there?

A. I think, because I had no connection with it, but I think BAT owned an insurance company. Is that conceivable? I think that's right. And they worked on some sort of

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legislative problem in California, I think.

Q. Okay. So Sawyer & Miller was not involved with any tobacco-related work for BAT?

A. Not to the best of my knowledge.

Q. Why did you leave Sawyer & Miller in April of 93?

A. Well, Sawyer & Miller, the partners who controlled the firm after they had bought out David Sawyer, immediately sold it in turn to Bozel, a huge advertising agency, and merged it with Robinson Lehrer, none of which I thought was neat, and as I didn't have to do it, I certainly wasn't going to take my last paycheck in life from Bozel, which I have no great respect for.

Q. And why is that?

A. I have known their management for 25 years, and I don't think very highly of them. But anyway, that's beside the point. The real point was that I didn't want to be in this new combine, and by that time I was 65, and why not stop. And then there were three terrific young men at Sawyer & Miller who did a whole lot of the work. The partners were terrific new business getters, but they were less involved, or at least

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a couple of them were after that. A lot of the work was done by Rob Shepardson and Lenny Stern and Mark Kaminsky, and they came to me and said would you like to join us. Why don't we, you know, like Judy Garland, let's start our own. So yeah, okay.

Q. And is the nature of Shepardson Stern's business very much the same as Sawyer & Miller was?

A. It's based on the model, yes. We like to think we execute better.

Q. Describe for me the nature of Shepardson Stern's business.

A. Well, the core product that we do is research-based strategies, usually for companies or governments that have a crisis or a question or whatever the term may be. We then do as comprehensive research as we know how on the target audiences within the companies, you know, trying to find out what the hell the real problem is, and a rational solution for it. And that's what we do for everybody, virtually, that comes to us. And then a funny thing happened, which was a lot of them said oh, you guys know more

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did -- because usually you're dealing with the top management, and they say you understand our problem better than anybody else does. Why don't you do the advertising, or why don't you stick with us in some form or another? Would you like an example?

Q. Sure.

A. Sallie Mae, the Student Loan Marketing Association, was faced with a real crisis the day that President Clinton said he was going to lend direct to college students, because they could go out of business if that proved to be the wave of the future. And they went to a guy named Barry Nalebuff, who was the professor of gain theory at the Yale Business School, and he teaches a course with Lenny Stern, who is one of my partners.

So they went down to Sallie Mae and listened to the problem and began a relationship, very heavily based on research, which proved that the problem wasn't quite so serious as they thought, and there were some action steps they could take to make it -- to make sure they were okay. We now are running a big advertising

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campaign for them which will begin this -- hasn't begun yet, and we have had a two or three year very satisfying relationship with them.

Q. Is the nature of the research that you do for Shepardson Stern the same as the type of research that you did at McCaffrey & McCall when you were in advertising exclusively?

A. Yeah, in theory it's the same. In action, you perhaps do more very highly targeted research with let's say chief executive or staff members of Congress, or Congressmen themselves, if you can get your hands on them, because quite often that is where the action is, and you have to know what's going on.

Q. And you do personal interviews of those people?

A. Yes.

Q. And again, do you contract out the actual doing of the research?

A. Sometimes. Sometimes it's split.

Q. And sometimes you have Shepardson Stern people doing it?

A. Yes.

Q. Do you ever do the interviews

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yourself?

A. No. Not good enough at it.

Q. Mr. McCall, are you a member of any professional associations?

A. Now?

Q. Yes.

A. No. I was a director the American Association.

Q. Of Advertising Agencies?

A. Yes.

Q. The Four A's?

A. The Four A's. Jim McCaffrey was the chairman.

Q. When did you serve as a director?

A. Gosh, I would say early 1980s. Maybe late 70s, I can't remember.

Q. How long did you serve as a director of the Four A's?

A. Several years, two or three years.

Q. How large of a board did it have then?

A. I would say 18 people, something like that, if that.

Q. Did you ever have any debates when

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you were on the board of directors of the Four A's about tobacco advertising?

A. I wouldn't say debate is the right word. I think everybody knew my position.

Q. Was it ever discussed?

A. Not formally.

Q. Have you ever served on the editorial board of any advertising or marketing journals?

A. No.

Q. Have you ever served as a peer reviewer for any advertising or marketing journals?

A. No. Didn't know they had them.

Q. Have you had any articles published in any advertising or marketing journals?

A. Well, I wrote an article that the Harvard Business Review published, if that is a marketing journal. I don't know. I made a lot of speeches to the Association of National Advertises, to the 4 A conventions, things like that.

Q. And what were the topics of those speeches?

A. Usually creativity, same old stuff.

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Q. Techniques and advertising concepts and so on?

A. Yes. Made a speech to Den Sohoon, Tokyo, which was fun.

Q. When was that?

A. Some time in the 70s or 80s.

Q. In your view, what are the most respected advertising journals that are published today?

A. Well, we were laughing about this, because there is very little that is written about advertising that is of enormous interest to practitioners. I was once asked to teach a course at Yale in one of the residential colleges, and they wanted me to have a 12-book bibliography for the poor kids to read, and I said there haven't been 12 books written about this subject that are worth reading. You know, I think the trade press is fairly good. I think Advertising Age does a good job, I think Ad Week is sort of a more Forbes-like version.

Q. And do you read those publications regularly?

A. I used to, and I now do sporadically.

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McCall

Q. So when you were with McCaffrey & McCall, you would read those publications regularly?

A. Yes.

Q. I noticed on your resume at the second page that you have a chairmanship in Call For Action. Is that current?

A. No, that's old.

Q. When were you the chairman of Call For Action?

A. Everything happened in the late 70s and early 1980s. I can't remember exactly.

Q. What is Call For Action?

A. Call For Action was a way to mobilize volunteers, particularly in New York.

Q. For what causes?

A. Any cause. I mean, well, not any cause, but if you -- a lot of people want to do something helpful and they don't know where to turn. Ellen Strauss was a wonderful woman who died recently who started this.

Q. So was it primarily charitable causes targeted towards poor people, or --

A. Whatever. Sick people, poor people,

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poor sick people.

Q. Are you currently involved in something called the Initiative on Tobacco Marketing in Children?

A. Is that Tobacco-Free Kids?

Q. Yes, I think so.

A. Yes. Well, yeah, I mean, the real answer is yes, we did a piece of research for them.

Q. Shepardson Stern did?

A. Yes.

Q. When did you do that?

A. Oh, a couple of months ago.

Q. And are you relying on that research for your testimony in this case?

A. I think it might be of interest, yes.

Q. I'd like to get that as well.

MS. FLOWERS: I would too.

Q. Tell me what that research was.

A. We were interested in seeing whether the rank and file of advertising agency executives agreed with the Four A's position on tobacco, so we did a survey among 300 advertising

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executives across the country, and asked them a series of questions.

Q. And what did you find?

A. We found that something like 75 or 80 percent agreed that advertising, tobacco advertising affected kids. We found that --

Q. Affected kids or appealed to kids?

A. Affected. We found that, I'm trying to remember the figures, a majority thought that there should be further restriction on tobacco advertising, some of whom thought that should be voluntary, some of them thought it should be mandated, but a majority thought that it would be impossible for the industry to regulate itself.

Q. So voluntary means what, not the industry?

A. It would be either getting the tobacco industry to abide by its own code, or having the advertising agencies have a code of conduct about it, which it would do and wouldn't do.

Q. What were the other results of this survey?

A. I think those were the major ones,

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but I apologize to both of you for not having given you these. It was in the Wall Street Journal. It was not some hidden thing.

Q. Who paid for that research?

A. We donated it. We donated our work pro bono to Tobacco-Free Kids, and I think, although I'm not sure, that we charged, or they paid for maybe $5,000 in out-of-pocket, which was the actual leg work that was done in the field.

Q. Who funds Tobacco-Free Kids, to your knowledge?

A. I don't know.

Q. Is there an organization called Tobacco-Free Kids?

A. Yeah, that's what I call it, the Campaign for Tobacco-Free Kids, which Bill Novelli is the chairman of.

Q. And is Mr. Novelli with any company?

A. He was the chairman of, or -- yeah, he was the chairman I think of Porter Novelli, which was a respected Washington public relations firm.

Q. You say Bill Novelli is the chairman of Tobacco-Free Kids. Are there members of the

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Campaign for Tobacco-Free Kids?

A. I honestly don't know.

Q. Do you consider yourself a member of the organization?

A. I've worked for them with pleasure, and I am a supporter, but I don't know that member is the right word.

Q. Have you been involved in writing copy for their ads?

A. Shepardson Stern Kaminsky I think has written one ad for them, but otherwise not.

Q. What ad was that, or is that?

A. As I say, I think we did. I don't think I ever even saw it. But it was going to be an ad to put forth the results of the research, so it was logical for us to do it. But I'm not sure --

Q. The results of the survey?

A. Yes.

Q. I have seen an ad with a child with zippers over his eyes.

A. Yeah, we didn't do that.

Q. There was an ad that I saw that was in the New York Times on Sunday on the op-ed

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page. Did Shepardson Stern & Kaminsky have any involvement in that?

A. What was the subject matter?

Q. It had to do with Joe Camel.

A. No, I don't think so.

MS. BIXENSTINE: I'd like to mark this as Deposition Exhibit 9 for identification.

(McCall Exhibit 9 for identification, Ad from New York Times, March 16, 1997.)

Q. Mr. McCall, I'm handing you what has been marked as McCall Deposition Exhibit 9, which is the ad I was just referring to that appeared in the Sunday New York Times on March 16, 1997 on the op-ed page.

Did Shepardson Stern & Kaminsky have any involvement in this ad, to your knowledge?

A. To my knowledge, no.

Q. Did you see this ad before?

A. Yes. But I was away through the period before this, while this would have been being produced, but I don't think we did that. It doesn't look like anything we would do.

Q. Do you know who did produce it?

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McCall

A. There is it an advertising agency in, I think in Cleveland -- no, Cleveland? Columbus, something like that, that is very involved, and they are the agency for Tobacco-Free Kids. We are not.

Q. Do you know the name of that advertising agency?

A. No.

Q. Who is the target market for this ad?

A. Well, I think the public, the voting public. As it says, tell your elected officials to support restrictions, blah blah.

Q. Do you have any opinion as to the effectiveness of the Campaign for Tobacco-Free Kids?

A. Well, it doesn't seem to be a campaign, it seems to be one ad at a time, you know. I didn't like the zipper one very much. I thought it was sort of repellant, not on its subject matter, but the way it was done.

Q. What, the image of zippers over eyes?

A. Yeah. I think the most interesting

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thing about this one is using the tobacco people's own words.

Q. You think that is compelling?

A. Yes.

Q. Have you seen the 1976 document quoted in this advertisement?

A. Which one, 96 or --

Q. The 1976 document.

A. Oh, I'm sorry, no, I haven't seen it.

Q. If it were the case that that document was a draft and not a final version, do you think that it's misleading to use a draft document in an advertisement like this?

A. I just have to know much more about it, where in the process this was done.

MS. BIXENSTINE: I'd like to mark this document, which states on the front RJR Secret, Planning Assumptions and Forecasts for the Period 1977-1986, plus for RJ Reynolds Tobacco Company, and the bottom states Research Department, March 15, 1976.

(McCall Exhibit 10 for identification, Planning Document dated March 15,

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1976.)

And I'd like to mark as McCall Deposition Exhibit 11 a document, the second page of which is also labelled RJR Secret, Planning Assumptions and Forecast for the Period 1977-1986, plus for RJ Reynolds Tobacco Company, and on the bottom, it states Research Department May 17, 1976. And there is a cover memorandum from Alan Rodgman to distribution dated May 17, 1976. And it appears to be an RJR interoffice memorandum. I'm going to hand you both of these documents.

(McCall Exhibit 11 for identification, Planning Document dated May 17, 1976.)

Q. I'm handing you what have been marked as Deposition Exhibits 10 and 11 for identification, and I am assuming, based on your testimony, that you haven't seen these documents before. But if you could take a look at them and see if you have, have not seen them before, I would appreciate it.

A. All of it?

Q. Well, can you tell by taking a quick

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look whether you've seen them before or not?

A. Yeah, I haven't seen them before.

Q. Okay, I will direct you to a specific page, and then if you feel that you need to look at more to answer my question, then by all means do that.

Going back to the Campaign for Tobacco-Free Kids ad that appeared in the New York Times on March 16, there is a quote from a 1976 RJR internal memo. You see that?

A. Yes.

Q. If you turn to page 14 of the March 15 version of this document, on the left column under paragraph 2, you will see that language that is quoted in the Campaign for Tobacco-Free Kids ad. Do you see that?

A. Yes.

Q. Now, if you turn to the final version of the document, on page 15, and you see that page 15 looks the same as page 14 in the earlier version; page 15 of the May 17, 1976 document looks pretty much the same as page 14 of the March 15, 1976 document. Do you see that? That talks about -- there is a capital E products?

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McCall

A. Yes.

Q. And a number of numbered perhaps, and you see under paragraph 2, the paragraph starts out the same, the present large number of people in the 18 to 35-year-old age group represents the greatest opportunity for long-term cigarette sales growth. Young people will continue to become smokers at or above the present rates during the projection period. The brands which these beginning smokers accept and use will become the dominant brands in future years. You see that that language appears in both the draft and the final version?

A. Yes.

Q. Okay, but do you see that the language that is cited in the Campaign for Tobacco-Free Kids ad about 14 to 18-year-olds has been omitted from the final version of the document?

A. Let me just get this straight. This is the new one and this is the old one. Yeah, it's been cleansed, as they say.

Q. Well, it's not there in the final version.

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A. No.

Q. Well, do you think that it is fair to use a draft document in an advertisement to try to show what Reynolds' intent was in 1976?

A. Well, I really have no idea. I have no idea for instance why that sentence was removed.

Q. Do you know if anyone investigated why the sentence was removed?

A. I wouldn't know. I had nothing to do with the ad.

Q. When you read this ad for the Campaign for Tobacco-Free Kids, did you have any opinion as to whether that statement was taken from a marketing memo?

A. It says internal memo.

Q. Did you have any idea about whether that was a statement from marketing people or non-marketing people?

A. Well, it sounds like marketing talk.

Q. Okay. In fact, looking at these documents, you can see that they are documents from the research and development group at Reynolds, correct?

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A. Yeah. I'm not sure what the point is though, because the research and development might easily, you know, they are as involved in marketing as anybody else.

Q. In your experience, are R&D people in control of marketing decisions?

A. They're a big factor, but not in control.

Q. Do you think that it was misleading to suggest that this was a marketing memo when in fact it was not?

A. Well, I don't think they said that.

Q. Well, in juxtaposing it with Mr. Goldstone's comment from 1996, 20 years later, about I do not want to sell tobacco to children, isn't the implication that that was a marketing memo?

A. I don't think so.

Q. Looking at the next paragraph of the ad for the Campaign for Tobacco-Free Kids, it says in 1988, RJR introduced Joe Camel. Subsequently Camel's share of the kid's market quadrupled. Do you know what the basis for that statement is?

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McCall

A. No.

Q. Do you have any evidence to support that?

A. I didn't write the ad, so you know, I'd like that clear. I have no idea what their basis is.

Q. Do you know what the basis is for the next statement, which reads, Camel is now the second most popular cigarette among children?

A. I've seen the research that said that kids found as familiar with Joe Camel as Mickey Mouse. I'm not sure I've seen anything that says it's the second most popular cigarette.

Q. What is the research you've seen that says that kids were as found to be as familiar with Joe Camel as Mickey Mouse?

A. My memory is that it was again that USA Today survey, but I'm not sure.

Q. Are you familiar with a study done by a Dr. Fisher?

A. No.

Q. Are you aware that the conclusion that kids were as familiar with Joe Camel as Mickey Mouse came from a survey of 23

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six-year-olds?

A. No.

Q. Okay, do you think that a survey of 23 six-year-olds is representative?

MS. FLOWERS: Object to the form.

A. I think you'd prefer a broader survey.

Q. Would you in your own research, if you wanted a representative sample of the US population, would you ever do a survey of only 23 people?

MS. FLOWERS: Assuming that it was 23 people, go ahead and answer it.

A. Yes, if you are trying to find out what is going on in the general population, you want more than 23 people.

Q. How many people would you want?

A. Depends.

Q. What would be the minimum?

A. A couple of hundred.

Q. Are you familiar with the methodology that Dr. Fisher used?

A. I've never heard of Dr. Fisher.

Q. He showed children certain logos and

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had them match it with a game board. In doing that kind of research, would it be important to vary the order in which you showed the research subjects the logos?

A. Well, you usually, when you are presenting ads to a focus group, you vary the order.

Q. And what is the reason for doing that?

A. You want to make sure that the order plays no part in what people respond to you.

Q. So that there is no order bias, is that right?

A. Yes.

Q. And if the six-year-olds in Dr. Fisher's survey, all but one, saw these logos in the same order, do you think that would skew the results?

A. I don't know.

Q. It's not an ideal methodology, is it?

MS. FLOWERS: Object to the form.

A. True.

Q. True?

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A. Yes.

MS. BIXENSTINE: It's about 20 after 12. Would this be a good time to take a lunch break?

THE WITNESS: Sure.

MS. FLOWERS: That's fine with me.

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McCall

A F T E R N O O N S E S S I O N

1:38 p.m.

CONTINUED EXAMINATION

BY MS. BIXENSTINE:

Q. Did you discuss with Ms. Flowers your testimony from this morning over lunch?

A. I think it was chiefly what to order, and only how are we doing, she said fine, and that was that.

Q. When were you first contacted by the Ness Motley firm or other plaintiffs' counsel to serve as an expert in this case?

A. I'd say a couple of months ago, two or three months.

Q. How many meetings have you had with plaintiffs' counsel?

A. Two, counting yesterday.

Q. You met with Ms. Flowers yesterday?

A. Yes.

Q. Was anyone else present at that meeting?

A. No.

Q. And how long did you meet with her?

A. Shorter than this meeting. Two

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hours.

Q. And who else have you met with from plaintiffs' counsel?

A. Really, in terms of serious meetings, nobody. But I did meet Ron Motley, who came to lunch with us and left after 20 minutes.

Q. When was that lunch?

A. That was a month ago.

Q. And who else was at that lunch?

A. Jodi.

Q. What did you discuss at that lunch?

A. Not much at lunch. That afternoon we talked about -- I mean, I've never been subject to this before, so they were explaining sort of how it works.

Q. Were they talking about what the litigation was about?

A. Yeah, but I had some indication of that anyway, or I wouldn't have been there.

Q. Was that from the news media or from other sources?

A. News media chiefly.

Q. When you say you discussed what this was about, what do you mean?

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A. Well, that the State of Florida, among other states, are suing the tobacco companies.

Q. And did you discuss what the gist of your testimony would be at that time, at the lunch a month ago?

A. Well, I think it was basically that I am a veteran advertising person who could be helpful in being an expert on what ads and media plans and so forth do or don't do.

Q. Okay. Did you discuss any particular advertising campaigns in either of your meetings with plaintiffs' counsel?

A. Well, I'm sure that Marlboro always comes up, Joe Camel always comes up. I bring up Virginia Slims if nobody else does.

Q. Any other advertising campaigns that you have discussed with plaintiffs' counsel?

A. No, not that I remember.

Q. I'd like to return to Deposition Exhibit 2, the Florida Youth Risk Behavior Survey Report, and I'd like to turn your attention to page 4, which is an executive summary of the report. And I would like to direct your

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attention about a quarter of the way down the page under selected findings. Do you see that?

A. Yes.

Q. And it says the following Florida survey results are compared when available to the 1990 national sample, and again for the record, this is the 1991 Florida Youth Risk Behavior Survey report.

The first bullet point states that 24 percent of all students in the Florida sample carried a weapon during the last 30 days. This compares to 20 percent in the national survey. Do you see that?

A. Yes.

Q. The next bullet point states, over a third (39 percent) of all males in the survey carried weapons during the last 30 days. This compares to 32 percent in the national survey. Do you see that?

A. Yes.

Q. Skipping down one bullet point, over a third (36 percent) of all female students in the Florida sample seriously considered suicide during the last year. This compares to 34

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percent in the national survey.

A. Yes.

Q. Next bullet point, more than one in 10 (13 percent) of the females in the Florida sample reported attempting suicide in the last year. This compares to 10 percent in the national survey.

A. Yes.

Q. The next point says a quarter (25 percent) of the students in the Florida sample reported smoking cigarettes some time in the last 30 days. This compares to 32 percent in the national survey.

A. Yes.

Q. And the next bullet point states 19 percent of the 12th grade females in the Florida survey smoke cigarettes every day for the last 30 days.

A. Yes.

Q. Then there are a number of bullet points on drinking I think which we covered earlier, and then moving down after the bullet points on drinking, do you see one in five (21 percent) of the 12th graders in the Florida

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sample reported using marijuana during the last 30 days.

A. Yes.

Q. And then a bullet point states, 61 percent of all students in the Florida survey have had sexual intercourse (79 percent for 12th graders). This compares to 54 percent in the national survey (72 percent) for 12th graders. Do you see that?

A. Yes.

Q. And the next, the last bullet point on this page says over half (54 percent) of the students surveyed who have been sexually active did not use a condom the last time they had sexual intercourse. This compares to 55 percent in the national survey. Do you see that?

A. Yes.

Q. Now, carrying a weapon, Mr. McCall, is both an unlawful activity and an illicit activity, correct?

A. Yes.

Q. And smoking marijuana is unlawful and it's also an illicit activity, correct?

A. Right.

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Q. And having sexual intercourse as a minor is an illicit activity, correct?

A. I will take your word for it.

Q. And then drinking and driving is unlawful, correct?

A. Yes.

Q. Now, none of these activities is advertised, correct?

A. To the best of my knowledge, yes.

Q. And in fact, there has been a heavy counter advertising campaign for some of these activities like drug use and there has been an advertising campaign encouraging the use of condoms during sexual intercourse, and a heavy advertising campaign against drinking and driving, correct?

MS. FLOWERS: Object to the form, just as compound, and to the vagueness of heavy.

Q. Okay, let me break it up. There has been a national campaign over the last several years to discourage teenagers from using marijuana, correct?

A. Heavy, I wouldn't say, yes. There's been an effort to stop drug use.

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McCall

Q. And there has been an effort combined with an advertising campaign nationally to encourage the use of condoms during sexual intercourse, correct?

A. The extent of it I don't know, because I have not seen it, but it wasn't aimed at me, so --

Q. Okay, you have seen ads sponsored by Mothers Against Drunk Driving and others discouraging drinking and driving?

A. Yes.

Q. Now, I believe you said earlier this morning that kids, or children, are attracted to doing things that adults tell them not to do, is that right? That's been your personal observation?

A. I think that's human nature, yes.

Q. And these data suggest, do they not, that a substantial percentage of our teenagers are engaging in risky behaviors, correct?

A. Yes.

Q. And don't these data suggest since the substantial percentage of high school students are engaging in risky behaviors that are

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not advertised, that there is something other than advertising going on in our culture that is leading some kids to engage in risky behaviors?

A. Well, I think there is always something other than advertising. It doesn't exist, you know, by itself. What it is, is a powerful force within a larger culture.

Q. So there is a powerful force at play in our culture that is leading at least some kids and a fairly substantial percentage of kids to engage in a whole range of risky behaviors, correct?

A. Yeah, it's such a complicated question, you know, I wish I had the answer for you. But you know, it has to do with, you know, take the gun part. It has to do with living in a gun society and having people who are very enthusiastic about everybody having guns, it has to do with poverty, you know, there are myriad of -- sure, there are other things than advertising that affect --

Q. Kids' behavior?

A. Kids' behavior or anybody else's behavior.

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McCall

Q. As a person who is obviously concerned about public health and health issues, are you more concerned with, take for example the marijuana statistic that one in five of the 12th graders in Florida reported using marijuana during the last 30 days, or the statistic that a quarter of the students in the Florida sample reported smoking a cigarette some time in the last 30 days?

A. Frankly from a health point of view, I'm much more concerned about the cigarettes.

Q. And why is that?

A. Because they kill people.

Q. So you don't think marijuana is bad for people's health?

A. I didn't say it wasn't bad for you, I said it doesn't kill you. I mean, I'm sure that of my six sons, I hesitate to give you my sample, but I'll bet you all of them smoked marijuana at one time or another, which I did not approve of, nor do I now. But as a health problem, as something that really bothered me, their smoking cigarettes is to me much more important.

Q. Does smoking marijuana impose certain

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short-term risks of impairing judgment and getting in accidents?

A. No, I think what it does is it makes you not quite as good a student as you might have been.

Q. And that is based on your personal observation?

A. That is based on my personal observation, yes.

Q. As someone concerned about public health, are you more concerned about 61 percent of the students in the Florida survey having had sexual intercourse and 54 percent of those who had sexual intercourse not using a condom, or the statistic about 25 percent reporting smoking one or more cigarettes in the last 30 days?

A. Well, I think neither is terrific, but I certainly would be more concerned about the cigarette smoking.

Q. Even with the epidemic of AIDS?

A. Even with the epidemic of AIDS, which shrinks in proportion to the number of deaths caused by cigarettes.

Q. But is growing all the time, and it

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takes people --

A. Well, there is a huge difference.

Q. AIDS kills people in their youth, and cigarette-related diseases, in general they hit in later years?

A. Just a little younger than I am, so I appreciate -- no, AIDS is a terrible scourge, and anything that can be done to lessen its impacts, and I think its impact is lessening for a variety of reasons, probably medication being one of them.

Q. Do you think that the advertising that has been done and the educational efforts that have been undertaken to encourage people to use condoms have been effective when you have 54 percent of the high school students engaging in sexual intercourse not using a condom?

A. Not effective enough.

Q. One final question on this line. As someone concerned about public health, are you more concerned about 13 percent of the female high school students in Florida attempting suicide in the last year, or 25 percent of the high school students reporting having smoked one

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McCall

or more cigarettes in the last 30 days?

A. Well, I am again more concerned about the cigarettes, but I wonder what in heaven's name is going on that would lead children to be so depressed, and I don't know whether that is a public health question. Perhaps it is, if you define public health in certain ways.

Q. So that is something that is of concern to you, but you are more concerned about the cigarette smoking?

A. Yes.

Q. And why is that?

A. Well, once again, you add up the numbers of teenage suicides, or young people suicides in the whole country, it's not huge. It's terrible that there are any, but cigarette-related illnesses and deaths are enormous.

Q. And so the fact that these are deaths that are occurring before one has even reached the prime of one's life doesn't outweigh for you the numbers of --

A. No, it doesn't.

Q. -- deaths that have been attributed

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by the government to cigarette smoking later in life?

A. I remember when JCPenney moved to Plano, Texas, they read in the paper almost that day that Penney announced the move that Plano had the highest high school suicide rate in the country. I think they lost about half of their good executives. Why? I don't know why.

Q. How do you as a veteran advertiser judge the effectiveness of an advertising campaign?

A. Again, it depends what you're trying to do. We'll judge the success of Southern Companies advertising by added number of people who are in our target audience who know about it and think well of it. If you are selling a packaged goods product, you judge it by sales.

Q. Market share, sales and whatever?

A. Yes.

Q. If RJ Reynolds Tobacco Company's goal in repositioning Camel in 1988 was to increase its market share initially among 18 to 24-year-old males and then later 18 to 35-year-old males and females, wouldn't you judge

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the effectiveness of the campaign by whether their market share has increased in that target market?

A. Well, your first if was if that was their only goal, and I think it's arguable, because we've seen both of them in your RJ Reynolds documents, that their goal was to get beginners at a younger age.

Q. What documents are you pointing to that say that the Joe Camel --

A. The draft that you don't like.

Q. But that draft was in 1976 and the campaign was introduced in 1988, so how are you relating that to the Joe Camel campaign?

A. Well, it was a leap. No, it seems to me that it's fair to say that they wanted to increase their share from 18 to 24 or whatever. It's also fair to say that one of the best ways to do that is to get beginners, and beginners don't begin at 18.

Q. What evidence do you have that people don't begin smoking regularly at 18?

A. The Surgeon General's Report and others.

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McCall

Q. Well, doesn't the Surgeon General's Report refer to people experimenting and not smoking regularly?

MS. FLOWERS: Object to the form.

A. I don't think that's what it says. I think it says that you may have your first cigarette at 12, but by the time you're 14 or 15, you are smoking regularly.

Q. Can you point -- which Surgeon General's Report are you referring to?

A. 1994 seems to be the most complete one.

Q. Okay, can you point that out to me in the report?

A. Right now?

MS. FLOWERS: I will object because he doesn't have the report in front of him.

Q. Have you read that report?

A. I read it, briskly, yes, sure.

Q. The whole thing or just portions?

A. Portions.

Q. Isn't it true that a substantial percentage of smokers, even according to the Surgeon General's data, do start smoking on a

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regular basis after age 18?

MS. FLOWERS: Object to the form.

A. That is not my memory of it.

MS. BIXENSTINE: Let's mark the 1994 report of the Surgeon General as McCall Deposition Exhibit 12.

(McCall Exhibit 12 for identification, Executive Summary and 1994 Surgeon General's Report.)

Q. Mr. McCall, I'm handing you what has been marked as Deposition Number 12, two documents here. One is the Executive Summary for the 1994 report, and one is the actual report. And perhaps you can take a quick look through here and see if there is the data you were referring to about the age at which people start smoking.

MS. FLOWERS: Object at the possibility of taking a quick look through this.

THE WITNESS: I have no way to look through that.

MS. FLOWERS: I assume you don't want me to help him.

BY MS. BIXENSTINE:

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McCall

Q. Well, Mr. McCall, this was one of the documents that was produced by your counsel in response to our document request asking for documents that you were relying on, or had reviewed.

A. Yeah, did I see that, one out of three adolescents in the United States is using tobacco by age 18. Adolescent users become adult users, and few people begin to use tobacco after age 18.

Q. So doesn't that show that two thirds start using tobacco after 18?

MS. FLOWERS: Object to the form.

A. If you are expecting me to give you details --

Q. If you don't know, just say you don't know.

A. I don't know. And I'm not even sure this is the source of what I've seen, but I have seen that, in some sort of reputable -- to me reputable thing, but I don't remember what it was.

Q. Was it a press report or some kind of government document?

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McCall

A. It could easily have been a press report about a government document, but I don't know.

Q. How did you come to look at the 94 Surgeon General's Report? Was that given to you by Ness Motley?

A. Yes, I think it was.

Q. And when was it that you briskly looked at portions of it?

A. Well, within the last couple of months, but I also, you know, most, or a whole lot of the press stuff that I have read has come -- uses that as the source.

Q. Okay. Is it your view that what you read in the press is always reliable?

A. No.

Q. So when you are talking about a reputable source, are you referring to the press?

A. Well, I think if the New York Times reports on what the Surgeon General's Report said, and other media say the same thing, it's apt to be pretty okay.

Q. Okay. So I was asking you if in

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McCall

determining the effectiveness of -- how you would determine the effectiveness of a campaign, and I think your answer was that you would measure it against what your objective was and what your target market was, correct?

A. Yes.

Q. I wanted to mark as Exhibit 13 an article out of USA Today that appeared on March 17, 1997, which was last Monday, which I just happened to come across.

(McCall Exhibit 13 for identification, USA Today article dated 3/17/97.)

Incidentally, Mr. McCall, in talking about it being part of human nature for children to want to do things that are illicit, or that our society says are for adults only, do you think that some of the anti-cigarette advertising may actually encourage kids to want to smoke?

A. What I would say is that the message has to be very clearly researched as to its effectiveness with children, so that what you say will work. And I don't think that's been true in all cases.

Q. So in other words you'd want to do

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focus groups and other research talking to children about how they perceive the ad?

A. Yes.

Q. Is that the best evidence of effectiveness, talking to the target group?

A. Well, it's the best predictor, yes. And sometimes they tell you things that wouldn't have occurred to you.

Q. Let's look at Deposition Exhibit 13, the USA Today article from March 17, 1997, and the headline is Levi's ads wear well with target audience of young consumers.

Did you by any chance see this article?

A. No. I was away. Was I away? No, I had just gotten back.

Q. Why don't you take a minute to read the article. I don't want to mischaracterize it.

Do you agree with me that this article is about recent commercials for Levi Strauss for its new wide-leg jeans?

A. Yes.

Q. And Levi has apparently started

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commercials which contain humorous scenes in an emergency room and on an elevator using retro rock tunes, correct?

A. Yes.

Q. And this article reports that these ads are very popular, but they've scored low on effectiveness, correct?

A. Yes. Whether that is true or not, I'm not sure they know.

Q. Do you agree that there may be ads that are well-liked, and in that sense are popular, but they're not effective in getting consumers to purchase the product?

A. There is no doubt that there are campaigns that are popular that don't have sales effectiveness.

Q. Can you think of some other classic examples?

A. One classic one was, what was the name of the stomach remedy that they did great advertising about 20 years ago, and everybody loved it.

Q. Alka Seltzer?

A. Yes, and they were making fun of

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people. In effect, what they really were doing is making fun of people with stomach aches. And something like, I don't know, 70 percent of the users of stomach remedies have chronic problems, and they use it every day, for whatever reason. So the very people they were after, they were offending, while the rest of it thought it was a riot. So sure.

Q. I wanted to ask you about paragraph 3 in this ad. There is a quote here, it says "We were launching a new product, so we wanted to cut through the clutter and get consumers' attention", says Ken Epstein, account supervisor at Levi's ad agency, Foote Cone & Belding in San Francisco. What is clutter in the advertising business?

A. Clutter is that there is an awful lot of advertising in television, there is an awful lot of advertising in the world. And I can't remember what the number is, but there are hundreds of impressions everyone can get a day, and what you want to do is to get to your target audience with something that is of sufficient interest so that you cut through that confusion.

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Q. And how does one, as an advertiser, try to do that?

A. Have the right message and present it in as interesting a fashion as you can.

Q. When the article refers to effectiveness here, do you interpret that to mean resulting in increasing sales?

A. Well, they're asking people's opinion of effectiveness, which is different from effectiveness.

Q. How would you measure effectiveness?

A. What happened.

Q. In terms of market share or sales?

A. Sales. You can get very wrong when you ask the public's opinion of advertising's anything. You know, because often they don't know. All they know is what happened to them and what they did about it.

MS. BIXENSTINE: I'd like to mark this article as McCall Deposition Exhibit 14.

(McCall Exhibit 14 for identification, Article entitled Recency Planning.)

For the record, this is a three-page

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article that appeared in the February, 1997 issue of Admap, and it's an article by Erwin Ephron, of Ephron, Papazian & Ephron, Inc. entitled Recency Planning. Have you seen this before?

A. No.

Q. Okay. To save some time, I can ask you specific questions, and if you feel that you need to stop and read the entire article, then we can do that.

I want to direct your attention to the second full paragraph, which starts, Recency planning is not about reaching frequency or even media. It is about how we think advertising works. It is based on the sensible idea that most advertising works by influencing the brand selected by consumers who are ready to buy.

Do you agree with that statement?

A. Partially.

Q. What part do you agree with and what part do you disagree with?

A. Well, I think if you've got -- if you've got a going brand which is happy with its market share -- the fact is I don't think I do agree with it, because somebody once wrote an

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absolutely wonderful thing about you think you have a 18 percent share, right? And therefore you think you've got 18 percent of the people who buy your product, same people. And you don't have that at all. You have people passing through in a lot of cases who remain stable at 18 percent, but they're not the same people all the time.

Q. So you have people switching in and people switching out?

A. For some brands. I mean, that was not true of Mercedes. It's very -- it's really not true of cigarette advertising or cigarette marketing, because there is very little, to what, 10 percent switching.

Q. Well, it depends what data you look at.

A. Right. But there are some who are switching all the time. Very price-based brands, thing likes that. I think people are always looking for a phrase to make them different. I know Erwin Ephron.

Q. What is your impression of him?

A. He's smart. I wouldn't bet my

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children's lives on him, but I think phrases like regency planning are not useful. It's too cute by half. I mean, it just doesn't cover the problem.

Q. Let me direct your attention to the seconds column about half way down, starting with make no mistake. Are you with me?

A. Yes.

Q. Ephron writes, make into mistake: The US has gone through a painful reevaluation of the "power" of advertising. We are beginning to realize advertising is a relatively weak marketing force, among the many forces that affect consumers. Do you agree with that statement?

A. Not really. I agree that it is a less powerful force. I mean, it was easy when you had three advertising networks, 10 major advertising publications, magazines or whatever, several newspapers, and everybody knew what they were, and you could get to your audience very easily, and you could predict. And now it's much more fractured than that. But that's like saying, I mean, a generalization like that is

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like saying networks don't matter any more. Well, networks do matter, and they are still the fundamental, the most important advertising force.

Q. Well, I didn't interpret Ephron's statement here to mean that advertising used to be stronger than it is, and now it's weaker because there is --

A. Well, that's what I said.

Q. Okay, a fractionalization of the media outlets. I thought he was saying that he thinks people are realizing that advertising just isn't that powerful a force in effecting consumer decisions.

A. I guess where I disagree is relatively weak marketing took. That's not what I would say.

Q. What would you say?

A. I would say it's an extremely strong advertising or marketing force, which is weaker than it used to be and more complicated.

Q. And what is your support for that, just your experience?

A. Just experience, sure, and common

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sense.

Q. Okay, let's move to the next paragraph under purchase triggers. Ephron writes, we have also gone through a re-evaluation of what makes consumers buy. We now appreciate it is events in the consumer's life -- the empty cereal box, the high telephone bill, the broken dishwasher, the expiring car lease -- that get consumers to consider making a purchase, not the repetition of advertising messages. We now understand that most advertising creates sales by influencing the brand choice of a small group of consumers who are ready to buy. We now think that whether the consumer is in the market is more important than the number of messages he or she receives.

What is your view of that statement?

A. Well, I think I am surprised that that is news to Erwin. I mean, you know, because again, that's common sense. If somebody's car is breaking down, you are in the market for a car.

Q. So you agreed with that statement?

MS. FLOWERS: Object to the form.

A. I don't agree with the whole thing,

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no.

Q. All right, what part do you agree with?

A. I agree that it's true, and always has been true, that in addition to advertising, the power of advertising messages, that the timing in a person's life as to whether they need the product or not is another very important factor. That's different from what he said.

Q. Do you think that if somebody doesn't want to buy something, that advertising can get them to do it?

A. Well, I think advertising does amazing things. For instance, women never smoked except if they were hookers until the 1920s, when Chesterfield ran an absolutely brilliant campaign with the headline blow some my way, where a man was smoking, and this attractive woman was enjoying the aroma of the cigarette. And there was beginning of an entire thing that happened very quickly, where women became smokers where they had never been before.

Q. Weren't there also tremendous social changes at that time with the flappers and the

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first women's movement, and women getting the vote, that also could have affected women starting to smoke?

A. I think that there is no doubt that there are always other factors beside advertising. But in that case, advertising really triggered a move.

Q. Well, isn't there a great debate about whether advertising reflects and responds to emerging social trends or whether it causes them?

A. I suppose there will always be that debate. But I don't think there is any doubt what the trigger was there. The fact that the field was fertile was another matter.

Q. So you think that advertising triggers the changes rather than vice-versa?

MS. FLOWERS: Object to the form.

A. Sometimes.

Q. Not always?

A. No, I think they work, you know, I just tried to say as clearly as I can, they often work together.

Q. Do you agree with the statement here

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that we now think that whether the consumer is in the market is more important than the number of messages he or she receives?

A. Well, I think that is just such a wild overstatement as to be ridiculous. I mean, Coca-Cola is not spending the billions of dollars it does all over the world without the understanding that the number of messages people receive is one of the reasons they reach for a Coke when they're thirsty. What he is saying is that it's more important that they're thirsty. Well, they've been thirsty in the Middle East for a millenium, but they're reaching for Cokes big time because of the power of advertising.

Q. Is Coke as widely distributed in the Middle East?

A. Yes. It's a huge market for them, because you are thirsty in the Middle East.

Q. Well, there are culture differences that play there too, are there not?

A. Some, yes, sure.

Q. One last statement I wanted to ask you about that is at the end of the first page starting with the old model, second to last

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paragraph.

A. Right.

Q. Ephron writes, the old model regards the consumer as a blank page on which the advertiser writes brand messages. The new model says consumers control the messages by screening out most and selecting only the few that are relevant to them at the time.

Do you think that this so-called new model that Ephron describes is valid?

A. I think what is invalid is the old model as he describes it. I mean, this is Marketing 101. There has never been a time when serious marketers were so unsophisticated that they thought you had a bunch of empty blackboards out there that you could draw on and make people do as you pleased willy-nilly.

Q. So in other words you don't think people are robots that you can manipulate through advertising?

A. I think you can influence them with advertising, but no, I don't think people are robots.

Q. And you don't think you can

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manipulate them?

A. The person I worked for, David Ogilvy, said the consumer is not a moron, she is your wife. And he said that 40 years ago. Erwin I think actually worked for us at one point for a very brief time.

Q. At Ogilvy & Mather?

A. No, at McCaffrey & McCall.

Q. Do you think that there are certain segments of our society that are more easily manipulated by advertising than others?

A. Well, I think there is some evidence that higher education, higher sophistication, makes people more resistant to the more obvious blandishments of advertising.

Q. What evidence is that?

A. Just experience. And that the, you know, the poor and the black people, if they are poor and uneducated are more easily rolled. You know, you look at the market baskets of poor people, which I've always been fascinated by, everything that is bad for you is in their market basket.

Q. And you think that is because of

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McCall

advertising?

A. Partially.

Q. Are you familiar with data that show that black youth have a lower incidence of smoking than white youth?

A. Yeah, I saw that, with interest. One of the things I read, and can't remember where, was that one of the reasons for that is that black girls are not as weight nuts as white girls, so they're less susceptible to the idea that if they smoke they will be thin, because they don't care as much.

Q. You haven't seen any data that shows that there is any less exposure to cigarette advertising among black youth than white youth, is there?

A. No. I think in some cases, certainly in some brands, there is more.

Q. Okay. Isn't it a fact that there is a lower incidence of smoking initiation among black male youth than among white male youth?

A. I don't know what the figures are. Wasn't it close? I can't remember what it was. Because I remember, white male youth is also in

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some decline, and black male youth too, so I can't remember what the numbers are. I'd love to know where he got the name regency planning. That's a funny name.

Q. Recency.

A. Oh, recency. There, it's my eyes, not his --

Q. Would you agree that advertising sources of information are generally regarded as less credible sources of information than other sources?

A. What is an advertising source of information?

Q. Ads themselves, commercials, billboards, print advertisements.

A. Oh, I think there is high skepticism about almost everything, including advertising, which doesn't do any better, and does somewhat worse than others.

Q. So do you think that for example people will rely more on their personal experience or information gained from family or friends than information obtained from advertisements?

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McCall

A. Again, I think it depends. If you are shopping for a car, you probably would talk to a lot of people who own cars like the ones you -- and that would be a very important influence. On the other hand, we have found at Mercedes that people flock to the showroom for catalogues and for information and stuff. They also go to that showroom because of advertising. So it's all an interlinked process. So if you are introducing Mountain Dew, I don't think you are going to anybody for advice about it, you are influenced solely by advertising.

Q. And that is for what reason?

A. It's relatively unimportant. It's not a big ticket item.

Q. And it's a frequent purchase?

A. Partially that, yes. It's not a big deal, I guess, you know.

Q. Is there a great deal of switching among the carbonated beverage drinker, soft drink?

A. I'm not very up-to-date on it, and I've never been really involved in it. I think the Coke Pepsi wars indicate there must be

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something.

Q. Does the competitiveness among the cigarette manufacturers also indicate that there is a reasonable amount of switching in that market as well?

A. Well, as I said, I have read that it's less than 10 percent, which isn't a lot of switching.

Q. Where have you read that?

A. Somewhere, and I can get -- I will have the source for you next time. But I think that's pretty well agreed on. Also, I don't --

Q. Isn't it substantially higher among younger adult smokers than 10 percent?

MS. FLOWERS: Object to the form.

A. I don't know.

Q. Go ahead, I'm sorry.

A. Maybe this is because I'm looking at this from a legalistic point of view these days, but you don't feel the competitive nature between the different cigarette companies as much as you sense that they're together.

Q. You don't think that they're very competitive in their marketing?

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A. Not particularly, no.

Q. Well, as someone who represents a cigarette company, I assure you, and representing Reynolds, which has a much lower market share than Philip Morris, they are very competitive.

I'd like to go to your expert report now, Mr. McCall, which we marked at the outset as Deposition Exhibit 1. And I believe you told me earlier that this was prepared by counsel, correct?

A. Correct.

Q. It says subject matter and substance of expected testimony. David McCall has been a leading figure in the advertising profession for many years. See attached resume. He is expected to testify on the following matters: One, Mr. McCall will testify regarding his historical and present-day experiences and observations within the field of advertising and promotion as it relates to cigarette marketing and advertising.

What experiences have you had with cigarette advertising -- excuse me, cigarette marketing and promotion that you intend to

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testify to in this case?

A. I think in as far as number 1 is concerned, the precise wording of it, is all I can really offer is under observations rather than experience, because I haven't handled cigarette accounts.

Q. Okay. What observations have you had historically and currently that you plan to testify to? We can take them one by one if you prefer.

A. It's hard for me to say what my testimony is going to be when I don't know what the questions are going to be, but the brilliance of the Marlboro campaign is something that I think I -- it's been hailed within the last year as the outstanding marketing campaign of the last decade or whatever it was.

Q. And who has hailed it as such?

A. American Marketing Association. And as far as effectiveness is concerned, there is no doubt that is right.

Q. Because they have such a large market share?

A. Because it worked, from the

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beginning. I remember when Marlboro had a red tip and was for ladies only, so you wouldn't get your lipstick on the cigarette.

Q. And I believe you said earlier that the Marlboro cowboy has been an icon that is appealing across age spectrums?

A. Yes. Every spectrum that I know of.

Q. Do you think that the Marlboro ads appeal disproportionately to persons under 18?

A. I think my guess would be equally, but my further guess would be even more to kids; cowboys, and you know, the whole myth of the west.

Q. What is the basis of your guess, that it's more appealing, or even more appealing?

A. Not too many grown-ups running around in cowboy suits. It's a big deal for kids everywhere.

Q. Yeah, but Marlboro brand is very popular among cigarette smokers who are over 40.

A. Yes, everywhere.

Q. Do you favor banning ads featuring the Marlboro cowboy?

A. I think it would be -- I don't know

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how you can limit its impact on kids without limiting what the imagery is.

Q. So you would favor a content restriction then on cigarette advertising?

A. Yes.

Q. And do you support the First Amendment?

A. Oh, yes, the First Amendment, that good old First Amendment, that is the reason that our politicians are drowning in money, and it's the reason that -- okay First Amendment, I do support the First Amendment, my God.

Q. Do you think it's consistent with the First Amendment to have a content-based restriction on cigarette advertising?

MS. FLOWERS: Objection. Calls for a legal conclusion.

A. I have debated with Bert Newborn.

Q. With whom?

A. Do you know who Bert Newborn is? He has been a hired legal spokesman for your industry. He is a professor at NYU.

Q. What is your position on that?

A. My position is you can't use the

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First Amendment as a mask for the evil and harm that this stuff does.

Q. Are you also in favor of content-based restrictions on alcohol advertisements?

A. No.

Q. Even though you said earlier that you thought that some of the alcohol advertisements are directed toward under-age people?

A. I don't think I said that, although I do think it's true.

Q. Okay. So if you think it's true, then why wouldn't you be in favor of a content-based restriction for alcohol advertising?

A. Well, I think I have to go back to my original statement that the abuse of alcohol causes harm. The use of alcohol does not cause harm. The use of cigarettes is mortally dangerous.

Q. Well, the use of alcohol causes harm if people drive.

A. Well yes, but you know, in proportion, the numbers don't add up. I mean, I

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don't know how many people are killed in automobile accidents through drunken driving every year, but it's a tiny proportion compared to the number of people who die because of cigarette and tobacco-related diseases.

Q. Well, I can show you, I have some reports here on the number of deaths and the CDC has attributed 105 thousand deaths per year to alcohol-related causes.

A. Yeah, you said that this morning.

Q. And there is a breakdown on drunk driving, and that doesn't even touch on the other costs of alcohol, on the home, and morbidity not resulting in mortality, and so on. But that doesn't affect you, I guess?

MS. FLOWERS: Object to the form.

A. No.

Q. All right. Going back to point number 1 of your expert disclosure statement, one of your observations is the brilliance of the Marlboro campaign. Are there other observations that you expect to testify about?

A. Well, I think the effectiveness of the Joe Camel advertising in jump-starting a

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brand among young people.

Q. And by young people, what do you mean? What age group?

A. From 14 to 25.

Q. Is there anything wrong in your view in targeting smokers who are 18 to 25?

A. No.

Q. So it's only targeting the 14 to 17-year-olds?

MS. FLOWERS: Object to the form.

Q. What evidence do you have that Joe Camel was intended to target 14 to 17-year-olds?

A. I think you just have to judge by results, you know, both the popularity and the effectiveness of the advertising in getting to kids.

Q. I showed you earlier today the data from SAMHSA that shows that overall consumption of smoking among 12 to 17-year-olds has stayed pretty level since the Joe Camel campaign. And so that suggests that whatever the Joe Camel campaign has done, it hasn't gotten more kids to smoke.

A. Well, that is apples to oranges,

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because what you are talking about is overall cigarette smoking and what we are talking about is the effectiveness of Joe Camel and kids.

Q. Well, do you think that Reynolds should be held liable by converting some kids who are smoking some other brand, say Marlboro, to Camel?

MS. FLOWERS: Objection. Calls for a legal conclusion, about go ahead.

A. I know that this is what you guys think and say. Switching isn't really the question when you're talking about young people. You're not switching little kids at 14 from Camels to -- from Marlboro to Camel. You have to inculcate people into smoking. You have to be convert them, from nothing.

Q. But if the data show that there hasn't been any increase in the percent of kids who are smoking, then I don't follow what you're saying.

A. I guess we're operating at cross-purposes, because I don't understand what you are saying.

Q. Well, I'm saying that if Camel's

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market share has increased among people under the age of 18, but the overall market share for people under the age of 18 hasn't increased, all the Joe Campbell campaign may be doing is shifting kids who are already smoking from some other brand to Camel.

A. Well, that may be. Otherwise, on the other hand, you might have had a decline, a more steep decline in kids that smoke, if Joe Camel hadn't --

Q. Well, that's speculation, isn't it?

A. Well, so is yours.

Q. Well, no, because I am pointing to data that show there hasn't been an increase in the overall market. So I don't think that's speculation. Do you think so?

A. What you are speculating though as to what would have happened to the market if Joe Camel hadn't been introduced, and I think it's perfectly possible that it could have gone into a decline, and that Joe Camel was a good way to get kids to smoke who had to smoke.

Q. Well, I don't understand how you can say that when the government data show that

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Marlboro has over 50 percent of the under-age market.

MS. FLOWERS: Object to the form.

Q. And suggests that if Joe Camel hadn't been introduced, there would be a decline in under-age smoking.

A. Well, now we're back to the question of weight again. I mean, Marlboro first of all has a very effective campaign. And second of all, I don't know what the proportion of dollars is, but it's hugely in favor of Marlboro.

(Recess taken.)

BY MS. BIXENSTINE:

Q. Is there any other evidence that you plan to rely on other than what you've told me already with respect to the Joe Camel advertising campaign?

A. No.

Q. What other observations about cigarette advertising and promotion do you expect to testify about in this case?

A. Well, I think the amount of money that is spent on promotion, promotional gear particularly, is a relatively new phenomenon, and

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I think a lot of it is gated to kids, meant to be, and successfully does so.

Q. Is that a phenomenon that has occurred in other industries besides the tobacco industry recently?

A. Yes, but more -- I think more in cigarettes, although Coke and Budweiser and others are right there.

Q. What are the goals of promotion as compared to the goals of advertising?

A. I think the goals are similar, if not identical.

Q. Which are?

A. To get consumers to buy your product.

Q. And you don't think it's primarily to reinforce brand loyalty and to get switching?

A. Oh, there may be, obviously there is some of that, but basically, I think if you can get people to save coupons toward a Marlboro backpack, you are trying to, you know, reinforce a -- convert and reinforce and hold a customer.

Q. Do you have any evidence that people buy cigarettes who don't smoke to get coupons for

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premium items?

A. I have no evidence.

Q. What is your evidence to support your view that the promotional gear is targeted to young people?

A. Well, the gear itself is kind of, you know, I don't think it's aimed at me.

Q. And by young people, you mean again, 14 to 25?

A. Yes.

MS. FLOWERS: Object to the form.

MS. BIXENSTINE: Well, I think he had said earlier in response to my question that he was defining young people as 14 to 25.

MS. FLOWERS: I must have missed that. I didn't hear it.

THE WITNESS: I think there are two sets of young people, and it is hard, because we kept going back and forth. There are adolescents, there are kids, I would say 13 to 18; and there are young people roughly say 18 to 25.

Q. What age group do you think cigarette companies are targeting with their promotional

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gear programs?

A. Both.

Q. 13 to 18 as well as 18 to 25?

A. Yes.

Q. And that applies for all of the different promotional programs for all of the brands?

A. No.

Q. Which ones does it apply to?

A. Well, I think probably the T-shirts and the backpacks and the -- I think there have been promotions wrapped around music, rock music.

Q. CDs?

A. Yes. I think those are at least equally aimed at the younger element.

Q. Don't people in their twenties and thirties and forties listen to rock music?

A. I think that if you are in the rock music business, you know what your audience is, and it's little kids. I mean, by the time you're 18, you are not listening to the hottest gangster rap any more.

Q. Well, aren't there CDs that one can

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get through cigarette promotions that are other than gangster rap that are rock music that people in their twenties listen to?

A. Oh, I don't think it's exclusively, I just said that a large part of it is aimed --

Q. When you say large part, what percentage are you --

A. I don't know.

Q. Are there any other advertising campaigns that you expect to testify about in your testimony in this case?

A. Well, it seems likely that we'll talk about Virginia Slims.

Q. And do you think Virginia Slims is targeted to people under the age of 18?

A. I think it's very appealing to young, very young weight-conscious girls who are worried about their appearance, and whether they are up to snuff or not, or down to snuff, whatever the word is.

Q. Do you know what the demographic breakdown is by age of people who smoke Virginia Slims?

A. No.

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McCall

Q. Do you know what the demographic breakdown is by age group of people who smoke Marlboro?

A. No.

Q. Do you know what the demographic breakdown is by age of people who smoke Camel?

A. No, except for that thing that I think I read that said that a disproportionate amount of their success has been among young people with the Joe Camel campaign.

Q. And do you remember the author of that?

A. No.

Q. And do you know if success was measured by asking about appeal of ads, or was it measured by actual purchase?

A. I think it was sales. It went from two percent to six percent or something like that, and quite a large percent of that increase was from very young people.

Q. But you don't recall what the source of that was?

A. No.

Q. Is there anything else that you

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expect to testify to with regard to paragraph 1 of your expert disclosure?

A. No.

Q. Mr. McCall, do you think it's possible to target the 18 to 25-year-old smoker group and have an unintended effect on younger smokers?

A. Would it be possible, yes. Does it make sense, no.

Q. Why doesn't it make sense?

A. Because it's vastly in the interest of the cigarette companies to get very young people, because that's when people begin to smoke.

Q. Well, we looked at the data, and you acknowledge that you didn't know what percent actually start smoking after 18, correct?

MS. FLOWERS: Object to the form of the question.

Q. Is that correct?

A. Could you rephrase the question.

Q. I believe that we discussed this earlier and you acknowledged that you don't know what percent of people start smoking after age

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18.

MS. FLOWERS: Object to the form of the question.

A. I couldn't give you the precise number, but I will be able to by the time we go to court.

Q. Have you seen data on what percent of the overall cigarette market is accounted for by under-age smokers?

A. I've seen it, but I can't recall the number. But the importance of it is the crucial thing. It's the converts. This is how you get people to smoke. You know, I think the number is something like 60 percent of all smokers begin before the age of 18, and by that time 70 percent have tried to quit and can't.

Q. And you are basing that on statements you have read in the media?

A. Yes.

Q. If you were working on an advertising account for a product like alcohol which is age restricted, and your client wanted to reach the 18 to 25-year-old age group, how would you advise them to do that without having an unintended

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effect on say 14 to 17-year-olds?

A. Well, I think you pointed out that 21 is the age limit in a lot of -- in most states, isn't it? So I don't think I would encourage them to do something that was aimed at 18 to 25.

Q. Your point is well taken. Let's say that your client was an alcohol manufacturer who wanted to target 21 to 25-year-olds.

How would you advise them to go about reaching their target market without having an unintended effect on say 16 to 20-year-olds?

A. Well, I think one example, for instance, of people who did it well, and I don't know whether they had the unintended effect or not, but certainly it wasn't designed to be particularly appealing to under 21-year-olds, is Absolut vodka, where with design and cleverness, they made themselves into a modern brand, appealing to I would say 25 to 40-year-olds. And I don't think that Absolut vodka would -- I don't think that would have been a kid's favorite ad to look at.

Q. Why is that?

A. Because it doesn't have any of the

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imagery or appeal that young kids -- very young people, adolescents would be particularly interested in.

Q. And do you know whether the Absolut vodka ad campaign has been effective in increasing sales among 25 to 40-year-olds?

A. Yes.

Q. It has?

A. Yes.

Q. And what is the source of your information on that?

A. Just reading the stuff in the trade press. I think it's -- if it's not the number one brand in the country now, it's close.

Q. Number one vodka brand?

A. Number one anything brand of spirits.

Q. Of hard liquor?

A. Yes.

Q. Moving on to paragraph 2 of your expert report, it states Mr. McCall will offer an opinion on whether cigarette marketing and advertising is directed toward youth.

What opinion do you plan to offer on

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that subject?

A. Well, we certainly covered this over and over again, but I'm happy to say it again. I think clearly, sure, it is.

Q. Are you saying all cigarette advertising is, or only the campaigns you've mentioned?

A. I think the campaigns I've mentioned are a large part of cigarette advertising, but all of those have a very distinct appeal to kids.

Q. You haven't mentioned Newport, which is one of the brands that is often cited as -- and is reported in government data as having a substantial share of the same size share of under-age market as Camel.

Do you think that that advertising is targeted towards persons under 18?

MS. FLOWERS: Object to the form.

Q. You may answer.

A. I suspect in the case of Newport, and here, just my guess, that menthol cigarettes are a nice entry level. You know, and they taste like peppermint or something. And that may

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have -- I don't think the advertising seems particularly gated towards kids.

Q. Assuming that it's true that Newport is more popular among under-age smokers than my client's menthol brand Salem, to what would you attribute that phenomenon?

A. I frankly don't know.

Q. Do you have anything else that we haven't covered already today that you plan to testify about with respect to paragraph 2 of your expert disclosure?

A. The only thing is that we touched on earlier, and because I hadn't remembered to tell Jodi did about it, she didn't remember to tell you, is this piece of research we did, where advertising executives do tend to agree with what I intend to testify about.

Q. And in that regard, do you think --

A. Not in every sense, but, you know.

Q. Right. In that regard, wouldn't you expect that a group of advertisers would tend to think that advertising has greater influence or power than people who are not advertisers?

A. Well, the advertising community was

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really asked, what do you think the intent of this advertising was, not -- well, in addition to what do you think the effect was. And in both cases, they said the intent is to -- the fact is that you do -- it is both seen and is targeted toward kids, little kids, and it works.

Q. And they are basing that solely on their --

A. Their opinion.

Q. Their opinion, and what they see?

A. Yes. And we'll get that to you, right Jodi?

MS. FLOWERS: I certainly hope so, yes, as soon as you get it to me.

Q. Moving now to paragraph 3 of your expert disclosure, it states Mr. McCall will offer an opinion on the propriety of cigarette advertising and marketing efforts which attract youth and the conduct of the cigarette industry vis-a-vis its marketing and advertising efforts.

By the way, in both paragraphs 2 and 3 of this report, how are you defining youth? Is that under 18?

A. Yes.

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Q. Okay, and what is your opinion on the propriety of cigarette advertising and marketing efforts which attract youth?

A. I think it's something they shouldn't do.

Q. And the propriety is based on your own ethical standards, is that right?

A. Yes.

Q. Okay, is it based on anything else?

A. I've always been interested that most cigarette executives say they don't want their children to smoke, you know. Then why do they spend all this effort and money to get other people's children to smoke?

Q. Well, I am not answering the questions here, but I can give you an answer.

A. I'm not supposed to ask them either, excuse me.

Q. I take it then that you do not believe what the cigarette company executives say, which is that the reason that they spend the money they spend on advertising and promotion and sponsorship is to reinforce brand loyalty and get people who are already adult smokers who aren't

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smoking their brands to smoke one of their brands?

A. I don't believe that is the entire reason for the effort.

Q. You believe it's a part of it, but not the entire?

A. Yes.

Q. And that is based on what?

A. Based on what you see, and based on the necessity to get new smokers.

Q. Do you believe that if there were really strong enforcement of the state laws in effect in all states now prohibiting the sales of cigarettes to persons under 18, or in some states people even older than 18, that nobody would start smoking?

A. No, I don't believe that, but I also think it would be nice as a step if somebody enforced those laws.

Q. Don't you think that there would still be a substantial percentage of the American population who would start smoking after age 18?

A. It's only part of -- oh, after age 18? It seems to be -- first of all, I don't

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think that enforcement of the present laws is going to stop smoking before 18, right? But if you stop smoking before the age of 18, you would have a very substantial effect on who smokes after 18.

Q. Well, let's take that piece by piece. Don't you think if there were vigorous enforcement of the laws prohibiting sales to minors, that that would substantially decrease smoking by people under 18?

A. I think it would be a good thing to do, as I said.

Q. And why would it be a good thing?

A. Because it would make it more difficult for kids to get cigarettes. But stopping them from getting them? I don't think so.

Q. They could take them from adults, I guess, or their parents?

A. Yes.

Q. But would decrease the consumption?

A. I mean, I got into ecstacy when I was 15 years old. You can violate the law. I don't mean the drug, I mean the movie. Hedy Lamarr's

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first starring role.

Q. That was an X-rated movie?

A. Well, she think she was nude. They said she was when she ran across the screen at a terrific clip, but you couldn't prove it by us. We thought it was wonderful. It would be hard to enforce those laws. They could do better than they do.

Q. What is the basis of your opinion that if you could stop people from smoking before age 18, that most of them wouldn't start?

A. Well, I think it's roughly based on this -- the fact, I think it's a fact, that this very large proportion of smokers begin between the ages of 13 and 17 and have tried to quit by the time they're 18 and can't, and if they haven't started, presumably they wouldn't have to go through that battle.

Q. Do you really believe they can't quit if they put their mind to it?

A. Some of them cannot quit. I am sure of that.

Q. And what is the basis of your statement?

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A. Just personal experience over years and years of watching, not only my children, but my friends.

Q. And so you think that there are some people who truly want to quit and can't quit?

A. Yes.

Q. Is there anything else that you expect to testify to with respect to paragraph 3 of this disclosure?

A. No.

Q. Let's turn then to paragraph 4. It states, Mr. McCall may be asked to offer an opinion on the effectiveness of counter-advertising with respect to cigarette use, and what opinion do you expect to give on that?

A. That based on what I know of the California initiative, and I think there was also one in Canada which I know less about, where they did very carefully crafted advertising, and the best thing was that public service announcements on the whole don't work. You can't put them where you want, you can't put them against the audience you want, you have no control over it.

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McCall

You know, I've done PSAs for a thousand good causes, and I've never seen one of them run. They're in there somewhere, but I don't stay up until 3:00 in the morning. What they did in California was to have a substantial advertising budget, I don't know whether it was $20 million or $50 million, but it was a lot of money for one state, and they could focus it and target it and do it just the way you would a real advertising program.

Q. When was that initiative in place?

A. I've tried to answer that before, with -- some time in the 19 -- maybe 87, 88, something like that. Pete Wilson is the one who diverted the money away from it.

Q. Is there anything else that you expect to testify to with respect to paragraph 4 on counter-advertising?

A. No. If the facts that I know are correct, I think it's a very effective tool, and should be used.

Q. Have you looked at any data about that other than what was said to you by Mr. Keye? Was it Mr. Keye?

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A. No, he is really my California source, because he was so involved in it.

MS. BIXENSTINE: Okay, and again Jodi, I would ask for copies of that.

MS. FLOWERS: I guess we need to find exactly what that is. I don't know if you want to talk about that now or later. I don't know the scope of it myself. I mean, I don't know what he has.

BY MS. BIXENSTINE:

Q. Do you have it readily available?

A. I have it in the office, and I will send it to you.

MS. FLOWERS: Whatever it is.

THE WITNESS: Whatever it is.

MS. FLOWERS: And I guess we'll have to make a judgment about whether it's something that --

MS. BIXENSTINE: If it's something that you intend to have him testify to, I would like to see it and have a chance to question him about it, and I won't belabor it.

Q. Moving on to the summary of grounds of your opinion, it says Mr. McCall will base his

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opinions on his education, experience, skill and training in the fields of marketing and advertising.

Is there anything in that area that you expect to base your opinions on other than what we've covered here today?

A. No, I think it's heavy on experience, maybe some skill, and a lot of training. But education in the fields of marketing and advertising is not something most advertising practitioners have.

Q. And all right, moving on to number 2, it states his review of the academic and professional literature concerning marketing and advertising. I think you told me earlier that you don't place a whole lot of weight on academic literature.

A. That will be a slender read.

Q. Are there any particular articles that you expect to rely on?

A. No.

Q. I was given a stack of documents by Ms. Flowers. Do you intend to rely on any of those in support of your opinions? I can take

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them out, if you would like.

A. Yeah, I mean yeah, I've scanned them, and I'm sure I will scan them again and try to be a little more precise about numbers and times and -- than I've been today.

Q. Are there any in particular that you are planning to rely on?

A. I don't think so.

Q. Number 3 states his review of cigarette advertising and marketing campaigns. Are there any campaigns other than the ones we've discussed today, Marlboro, Joe Camel and Virginia Slims?

A. No.

Q. And when you are talking about those campaigns, you are talking about fairly current campaigns, correct?

A. Yes. Of course, Marlboro hasn't changed much, which is one of their geniuses.

Q. But you don't intend to testify about any old cigarette advertising campaigns.

MS. FLOWERS: I am going to have to interpose an objection at this time, to the extent that the witness can't anticipate exactly

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what we are going to ask him about at trial, and he certainly has historical experience. So I don't want to mislead you in asking about historical campaigns.

MS. BIXENSTINE: Well, I would object to your asking him to testify on subjects that aren't set forth in the report and that we don't have an opportunity to examine him on.

MS. FLOWERS: I think that is why we are here today. Number one talks about his historical experience.

MS. BIXENSTINE: Right, and I asked him if he is planning to testify on any campaigns other than Marlboro, Joe Camel and Virginia Slims, and he said no. So if that's going to change, I'd like to know.

MS. FLOWERS: Well, I can go ahead and tell you now, counsellor, that it very likely will change. We can't anticipate exactly what we might ask him about at trial. And he is trying to give you his best guess of what he thinks he will be asked about, so this would be a time perhaps, if you want to probe his knowledge of the historical campaigns.

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BY MS. BIXENSTINE:

Q. Are you knowledgeable about other cigarette advertising campaigns, historically?

A. Well, I did mention that Chesterfield campaign, which was a landmark campaign. It's in every book about advertising, you know, the hundred great ads, includes blow some my way, because it was -- and I'm sure that -- I mean, I shouldn't have been quite so blithe in saying I wasn't going to testify about anything else. I mean, that's interesting, I think.

Q. And you know about that from reading about it in advertising texts?

A. Yes.

Q. Are there any other campaigns that you can think of that you may testify to?

A. One of my favorite things at Rosser Reeves was a great advertising man in Ted Bates, and really a scoundrel, and he did one for Winston where he said all the tars and nicotines that are trapped in this filter are guaranteed not to reach your throat, which I thought was hilarious, because if they're trapped in the filters, they won't reach your throat. I mean,

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there has been sculduggery in the field for a long time, but I don't know that I would particularly dredge that up.

Q. So that advertisement has nothing to do with your opinions about targeting youth, I take it?

A. No.

Q. Are there any other cigarette advertising campaigns that you can recall that you expected to testify about?

A. No.

Q. Are there any other advertising campaigns historically that you think targeted persons under the age of 18?

A. Cigarettes campaigns?

Q. Yes.

A. Not that I know of.

Q. Are there any cigarette advertising campaigns that you can recall that you thought were misleading?

A. I think that Winston one is a beaut.

Q. Are there any others?

A. Well, I think the whole general thought of refreshment and, you know, all of

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that, when you get right down to what cigarette smoke is, they are all misleading.

Q. Well, there are warnings on every pack and in every ad, isn't that right?

A. Yes, right. I love to look at billboards that are as big as this building and there is this little wee thing.

Q. Have you ever looked at data about people's awareness of the health risks of smoking?

A. It's high. Whether it's complete or not is another question.

Q. But it is high, very high, isn't that right?

MS. FLOWERS: Object to the form.

A. Yeah, I said it's high but incomplete, and I don't think the full impact of what cigarette smoking and cancer and emphysema are, are brought home to people.

Q. And what is the basis for your saying that?

A. A life experience.

Q. Without marking these, because that will take a lot of time, these are the documents

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that Ms. Flowers produced to me in response to a document request for documents that you are relying on, or have reviewed or were sent by counsel. And I will just read them off to you, and then if you could tell me if you expect to rely on anything in that document, then we can look at it specifically. Is that all right with you?

A. Sure.

Q. One was the 1991 Florida Youth Risk Behavior Survey Report dated February, 1992 which we went over.

A. Yes.

Q. Is there anything else in there that you expect to rely on in support of your testimony?

A. I don't think so. It's a lot of paper, as you know,.

Q. There is the 1994 Surgeon General's Report. Is there anything else in that document that you expect to rely on?

MS. FLOWERS: I'm sorry, I'm confused about the question. Anything else other than what? Than what we discussed here today, or

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are you just asking if he is going to rely on the document?

Q. I'm sorry, is there anything in the 1994 Surgeon General's Report that you expect to rely on in support of your testimony?

A. I don't think I know how to answer the question, because I'm obviously going to read it again before, and if there are interesting things in there I might mention.

Q. As of now there is nothing that you can think of?

A. No.

Q. There is a printout from a newspaper article that appeared in the Chicago Tribune on October 12, 1994. The headline is activist fired up over smoking article in kids' newspaper.

Do you expect to rely on this article in support of your testimony?

A. Did that article relate to the research we had done?

Q. No.

MS. FLOWERS: I'm sorry, I am going to have to object, but asking him cold about what he remembers about what we sent him, we sent him

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stuff in hopes that he will rely on things. I don't think it is fair to the witness to ask him to try to remember what that was.

MS. BIXENSTINE: Well, I can go ahead and show it to him. Let's mark this as Deposition Exhibit 15.

(McCall Exhibit 15 for identification, Article dated October 12, 1994.)

Q. Have you seen that document before, Mr. McCall?

A. If I haven't seen the document, I've seen the story.

Q. Do you expect to rely on this article in support of your testimony in this case?

A. Not so far as I know.

Q. The next document I have is an article by John W. Richard, Jr., Joe B. Tye and Paul M. Fischer. It appears to be a draft of an article for a journal called Tobacco Control. It's entitled, The Tobacco Industry's Code of Advertising in the United States: Myth and Reality. It appears not to be in final published form.

MS. FLOWERS: I believe it's been

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submitted and accepted for publication. That is the only -- most recent form you have.

Q. Do you recall this document?

A. Yes.

Q. Do you intend to rely on this document?

A. I might.

Q. Well then let me mark it then as Deposition Exhibit 16?

(McCall Exhibit 16 for identification, Article from Tobacco Control, 1997.)

A. It will just be as to whether people live by the code or not, which clearly they don't.

Q. You intend to rely on this document in support for your opinion that the cigarette manufacturers do not abide by the cigarette advertising and promotion code, is that what you are saying?

A. Yes.

Q. Is there other support that you intend to rely on for that opinion that the cigarette companies don't abide by the cigarette

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advertising promotion?

A. Just observation.

Q. Do you agree with everything that is set forth in this article?

A. I don't know. I can't remember everything that is set forth in the article. But I remember the basic thrust.

Q. Tobacco Control is not an advertising or marketing journal, correct?

A. I have never heard of it.

Q. We may come back to that one, but I'd like to move on.

The next document that was produced to me by plaintiffs' counsel was a document called A Frank Statement to Cigarette Smokers.

Do you intend to rely on that document?

A. May I look at it?

Q. Let's mark it as Exhibit 17.

(McCall Exhibit 17 for identification, Article entitled A Frank Statement To Cigarette Smokers.)

A. No, I don't think that has much to do about what I'm going to be talking about. It's

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pretty funny though.

Q. The next document I have is an editorial from Ad Age from January of 1992, Old Joe Must Go. Do you intend to rely on that?

A. Not particularly.

Q. And then I have four expert statements of experts that have been named by the defendants in, I believe the Mississippi Attorney-general case. These are experts statements for Claude R. Martin, Jr., Richard J. Seminik, Richard W. Misersky and Lucy Henke. Do you intend to rely on those?

A. I don't think so.

Q. Do you know any of those people?

A. No.

Q. Next I have an article by Ms. Lucy Henke entitled Parent Intervention to Prevent Smoking using Joe Camel to Teach Children About Smoking. Do you intend to rely on that.

A. No.

Q. Then I have two FTC reports to Congress, one from 1993 and one from 1994 on cigarette advertising and promotion expenditures. Do you intend to rely on either or

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both of those documents?

A. I might. I mean, certainly expenditures are important.

Q. And why are they important?

A. Because it's the weight, as I've said, that is almost as important as the content of advertising.

Q. Have you ever examined expenditures by the cigarette industry compared to other industries of approximately the same size?

A. No, but before I testified in front of the Congress, I did go into some depth as to where the money was going and what percentage of the audience in those magazines were kids, which is different.

Q. Talking about expenditures, have you looked at ad to sales ratios for the cigarette companies or cigarette brands compared to ad to sales ratios for other brands?

A. No.

Q. Are you aware that there are many other industries that have higher ad to sales ratios than the cigarette industry?

A. I am aware of that.

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Q. And you agree with that?

MS. FLOWERS: Object to the form.

A. I neither agree nor disagree. I am aware of it.

Q. Is there anything else about these reports that you expect to rely on in support of your testimony, the FTC reports to Congress and cigarette advertising and promotion expenditures?

A. There is nothing specific that I am thinking about. You know, as Jodi said, I don't know what questions I am going to be asked.

MS. BIXENSTINE: Well, the whole point of this is for me to understand what you have been asked to do, and it's not fair, Jodi, for you to keep the witness in the dark about what you are going to ask him to testify about so we can have a trial by ambush. That is the not the purpose of discovery.

THE WITNESS: No, I think it's pretty clear -- I'm clear as to what I'm going to testify about, and also my limitations as far as expertise is concerned.

MS. FLOWERS: And I think it's equally unfair to hold things like the Surgeon

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General's Report and the FTC report, that are detailed reports, as you know, away from the witness and say, okay, now what in here are you going to tell us? I mean, if you've got something specific you want to ask him about the document, go ahead and ask him about it.

MS. BIXENSTINE: No, these are documents that you have produced that he had reviewed or was relying on or that you sent him. I can go through and we can stay here longer and ask him to flip through and see if there is anything that he is planning to rely on, but it's pretty clear that he is not that familiar with these documents.

MS. FLOWERS: As I said, I can only hope that he will rely on them, but when you're dealing with someone who has got this much experience, we can never be sure what he is going to like and not like in what we send him. I think if you look at the four corners of his expert disclosure, you get a pretty good idea what we anticipate asking him about at trial.

MS. BIXENSTINE: Well, I disagree with that. The expert report only said he would

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offer an opinion on cigarette marketing and advertising. It didn't even say what the opinion was.

MS. FLOWERS: But you just elicited that opinion a few moments ago.

MS. BIXENSTINE: Right, through the testimony. Well, if he hasn't reviewed the documents, then it's going to be impossible for us in the six hour time frame to sit here and have him review it and then figure out what he might rely upon.

MS. FLOWERS: I don't think that's what his testimony was. I think his testimony was he did review them. You are now asking him an entirely different question, which is, what does he intend to talk about at trial, and he is telling you that he's not sure. It's your deposition, conduct it any way you want.

MS. BIXENSTINE: Well, I think that it's clear that we're going to have to resume this deposition, because you haven't produced all of the documents that he is going to rely on, and he is not sure what questions you are going to ask him, and he is not that prepared on the

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documents that you have produced about what in here he plans to rely on, and it's clear between now and trial he is going to do the work that he hasn't done yet to figure out what he is going to rely on, and then I won't have a chance unless we resume the deposition to find out what his testimony is really going to be. So I will reserve my objection for the record and my rights to go back.

MS. FLOWERS: This is a common theme we've heard over and over, and I disagree with your characterization. Everything that has been produced to you is pursuant to our agreement. You will get the exhibit list when you get the exhibit list. In the meantime, we have got this deposition here today for six hours for you to ask this man what his opinions are, and he is fully capable to give them to you.

MS. BIXENSTINE: I then have a number of documents from the files of RJ Reynolds Tobacco Company. I believe there are three of them and we will mark them as exhibits 18, 19 and 20.

(McCall Exhibit 18 for

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identification, Research Planning Memorandum.)

(McCall Exhibit 19 for identification, Memorandum dated June 10, 1985.)

(McCall Exhibit 20 for identification, Memorandum dated September 14, 1988.)

Q. Mr. McCall, these are three documents that have been produced by RJ Reynolds Tobacco Company in litigation, being handled by plaintiffs' counsel.

Exhibit 18 is an RJR confidential document called research planning memorandum on some thoughts about new brands of cigarettes for the youth market. The second page shows that it's a draft.

Exhibit 19 is a document dated RJR confidential dated June 10, 1985, from J.L. Gemma to H.J. Lees, and others.

And Exhibit 20 is a September 14, 1988 document to C.L. Haynes re younger adult OOH showing. And I was wondering if you intend to rely on any of these documents in support of your testimony in this case.

A. Well, as they relate to efforts to

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market down in age, it's very possible that I used stuff out of them. I might.

Q. Exhibit 19 only refers to smoking among 18 to 20-year-olds, correct?

MS. FLOWERS: Object to the form.

A. Yes.

Q. And so does this lend any support in your view to your opinion about marketing to persons under the age of 18?

MS. FLOWERS: Object to the form.

A. I think, and this is just an educated guess, that if I were writing documents of this kind and I knew what the law said, I wouldn't say I was talking about people 14 to 18.

Q. So it's just an educated guess, you don't have any evidence to support that?

A. I don't have any evidence, no.

Q. It may well be that Reynolds truly was targeting 18 to 20-year-olds, correct?

A. It's possible.

Q. And in fact this document doesn't even talk about marketing plans, it's a marketing research or marketing development department document about smoking behavior and trends among

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18 and 20-year-olds.

A. I was looking at number 20. I think it's unlikely that I would use these. I mean, as I see what I am supposed to say, it's to give an opinion based on my experience as to what the purpose of ads and commercials and promotional efforts that I have seen; what my experience says they are for.

Q. The next document that has been produced to me is a copy of the cigarette advertising and promotion code, and you have testified earlier that you believe the cigarette companies do not abide by that, is that correct?

A. Yes.

Q. Do you intend to rely on the code for any reason other than that?

A. No.

Q. The next document that has been produced to me is a document that appears to be from Philip Morris's files. It's a memorandum dated March 31, 1981, and the title is Young Smokers Prevalent Trends Implications and Related Demographic Trends. Do you intend to rely on this document?

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A. No.

Q. The next document that I have is the first amended complaint in this case, the State of Florida case. Have you reviewed that document?

A. Yes.

Q. Do you intend to rely on that?

A. I don't think so, except as it's the case. I don't know --

Q. Your understanding was it was given to you to inform you as to what the allegations in the case are?

A. Yes.

Q. Then apparently you were given a copy of the first day of the deposition of Dean Krugman taken on December 10, 1996 in the Mississippi Attorney-general case. Have you read that deposition?

A. Yes.

Q. And what was your opinion of Mr. Krugman's testimony?

MS. FLOWERS: Object to the form.

A. I read it quickly. I have no particular opinion. It didn't give me stuff that

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I --

Q. Was there anything that you recall that you disagreed with in his testimony?

A. Neither agree or disagree. I don't recall much.

Q. Okay. Have you read the second day of his deposition in that case?

A. I'm not sure.

Q. I'm not sure if it's available yet.

MS. FLOWERS: I don't think it is.

Q. Do you expect you will read the second day of his deposition?

A. If I am asked to, sure.

Q. Have you read any of the depositions of plaintiffs' other advertising experts in this case or in the Mississippi Attorney-general case?

A. No.

Q. Did you ask for Mr. Krugman's testimony, or did counsel provide it to you?

A. I just asked for it.

Q. The next document is also a document from Reynolds files. It's a marketing research report dated February 1, 1985, on Camel younger adult smoker focus groups. Do you recall that

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document?

A. No.

Q. Do you think it's the type of document that you would rely on?

A. I don't recall it.

MS. BIXENSTINE: Could you mark this Deposition Exhibit 21.

(McCall Exhibit 21 for identification, Marketing Research Report dated February 1, 1985.)

(Recess taken.)

BY MS. BIXENSTINE:

Q. Mr. McCall, I handed you what has been marked as McCall Deposition Exhibit 21. Do you intend to rely on this document in support of your opinions in this case?

A. No.

Q. The next document that I have is a draft article entitled Cartoons, Cotton Candy and the Marlboro Man: The Targeting of Children for Addiction by the Tobacco Industry, a working outline by Steve German of Herman, Herman Katz and Cotlar. And the date of this document is January 15, 1997. Do you intend to rely on this

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article?

A. I don't think so. I mean, I read it quickly, but what it seemed to me was to be basically his opinion, or a compendium of opinions, but I'm going to give my opinion, so --

Q. So you don't necessarily agree or disagree with his opinions?

A. Neither, yes.

Q. The next document is an article from Crain's International Newspaper of Marketing dated February 21, 1994. It appears to have come from Mr. Dean Krugman's files, and the headline is Teen Smoking and Ads Linked. Do you intend to rely on in article?

A. May I just look at it?

Q. Yes. We'll mark it as Deposition Exhibit 22?

(McCall Exhibit 22 for identification, Crain's article dated February 21, 1994.)

A. No.

Q. No, you don't intend to rely on it?

A. No. You know, it's a survey of the public, what they believe.

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Q. So you don't place much stock in that?

A. Well, I think it's generally known, and I am more interested in what advertising experts think, or the advertising community.

Q. The final documents that I have in this set of documents produced by counsel for the state of Florida in this case are a series of memos from the files of Hill & Knowlton, and there are eight such memoranda.

Do you expect to rely on those in support of your testimony?

A. I think I better review them, I'm sorry.

Q. We'll mark them as Deposition Exhibits 23 through 28.

(McCall Exhibit 23 for identification, Memorandum from Hill & Knowlton, Inc..)

(McCall Exhibit 24 for identification, Memorandum dated August 17, 1954.)

(McCall Exhibit 25 for identification, Hill & Knowlton Confidential

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McCall

Memorandum.)

(McCall Exhibit 26 for identification, Memorandum dated November 26, 1954.)

(McCall Exhibit 27 for identification, Public Relations Report dated February 14, 1956.)

(McCall Exhibit 28 for identification, Background Material on the Cigarette Industry Client.)

Q. For the record, these six memoranda are dated for the period December 15, 1953 through February 14, 1956.

A. Yeah, I don't think that certainly this first overall one falls into the area that I will be discussing. It's the history of how they began the Tobacco Council. Somebody else might be testifying about that, but not me.

Q. So you don't intend to rely on Exhibit 23?

A. Yes.

Q. Nor 28.

A. Fascinating, but it's all the great historical stuff, how it all began. That was

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27. I won't be using that, or 24, or 25, no, and 26, no.

Q. So you don't intent to rely on any of these Hill & Knowlton memos?

A. Right.

Q. And I think you told me earlier that public relations was not your area of expertise, is that correct?

A. I did tell you that. The funny thing is that people think we're a public relations company. It's very confusing. Public relations as you practice it by sending out press releases and knowing people at the newspapers and magazines is something I don't know anything about.

Q. What is the area of public relations that you do know something about?

A. That if people have a terrible problem, they come to us and we try to advise them on what to do about it, and that is clearly what Hill & Knowlton is doing.

Q. And when you say Hill & Knowlton was doing there, you mean advising the cigarette companies in the 50s about what to do about

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the --

A. After the crisis hit.

Q. About the reports linking cigarette smoking and lung cancer?

A. Right.

Q. And do you think they gave the cigarette companies good advice?

A. No, but that's all right. They would have lost the account if they had given any other advice.

Q. Is there anything else, any other documents or any other evidence you expect to rely on in support of your testimony at trial other than what we've discussed today and the information from the California Initiative and the survey that Shepardson Stern & Kaminsky did for the initiative on tobacco-free kids?

A. Not that I know of. I mean, you know, today's headlines suggest there may be other interesting correlations coming along, but I don't know what they are.

Q. By today's headlines, you mean --

A. The Liggett & Myers.

MS. BIXENSTINE: The Liggett

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settlement.

I'm going to mark as composite Exhibit 29 six Camel advertisements that have all run since the Joe Camel campaign was introduced by RJ Reynolds Tobacco Company back in 1988.

(McCall Exhibit 29 for identification, Camel advertisements [6].)

The first advertisement in this set is an advertisement for the 75th birthday promotion for Camel, and it features the illustrated smoking camel. And my question to you, Mr. McCall, is looking at this ad, in your opinion, what is the target market for this advertisement?

A. I'd say considering what Camel's, you know, past brand image had been, that this is an attempt to make it younger, but not specifically aimed, I wouldn't think, at children. Not this ad.

Q. So when you say younger, what age group do you think it's targeted at?

A. 18 to 30.

Q. And what about it do you think makes it targeted to 18 to 30-year-olds?

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McCall

A. Smokin' and things like that; and you know, and the very image of the thing.

Q. Smokin' meaning the language down here, S-M-O-K-I-N with an apostrophe?

A. Yes.

Q. And what do you mean by the image?

A. The image of Joe Camel itself is pretty spritely compared to what they had had.

Q. So it's a fun, irreverend image compared to the trademark of the Camel down in the corner?

A. Yeah, and I think I remember the advertising that preceded this, it was sort of guys with camels wrapped into their shirts.

Q. Yes, what they call the Bob Beck campaign, the loner on adventures around the world.

What did you think was the target for that earlier campaign, the Bob Beck campaign?

MS. FLOWERS: I'm sorry, I'm going to have to object on the grounds of speculation.

A. If I remember it correctly, it seemed to me it was meant to reinforce the blue-collar image of Camel.

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McCall

Q. Was there any particular age group that you thought the earlier Bob Beck ads were targeted at?

A. No. I'd say, you know, 20 to 40-year-old males.

Q. Moving to the next advertisement in this set, in Exhibit 29, this is an advertisement with the headline, or tag line smooth character, and there is the illustrated smoking Camel in the tuxedo. In your opinion, what is the target audience of this advertisement?

A. I'd say this has the same target, but with a younger appeal, because of the, you know. First of all you've taken away the 75th birthday. That is not a way to appeal to kids. This is sort of, you know, I would think would appeal to --

Q. What age group would you say this would appeal to?

A. As I was beginning to say, I think it's the same plus a younger group, you know, this is --

Q. 18 to 35?

A. Pretty attractive to 16 to 18s too.

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McCall

Q. As well as 18 to 35?

A. Yeah, 18 to 30.

Q. And what about this ad, aside from no longer referencing the 75th birthday, do you think appeals to people under 18?

A. Oh, I think the sort of never-neverland girl, and the submarine, and the, you know, that kind of imagery.

Q. Do 16 and 17-year-olds tend to wear tuxedos?

A. I don't know. Depends what they're doing. Nobody tends to where tuxedos if they can help it.

MS. FLOWERS: For the record, let us state that the ad also contains a scantily-dressed young woman.

Q. And is it your testimony that that woman would appeal to people under the age of 18 more than people over the age of 18?

A. Well, if I remember being under 18, you tend to live in more of a dream world than you do later, and this definitely is a dream girl kind of image.

Q. Is there anything else about this

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advertisement that you would point to to support your view that it would appeal to 16 and 17-year-olds as well as 18 to 30-year-olds?

A. Well, the adventure theme of the submarine and a little bit of James Bond or whatever.

Q. Do you know what the demographics are of people who go to James Bond movies, or watch James Bond movies?

A. No. All I can give you is a guess, that it's more men than women and more young men than old men, and a lot of kids.

Q. By young men, what age are you referring to?

A. Teenagers and up.

Q. Even though Sean Connery was -- I don't know what age he was when he was in those --

A. Ageless.

Q. The next ad in this set is Joe Camel riding a motorcycle with an outstretched hand holding a Camel pack of cigarettes.

In your opinion, what is the target market for this advertisement?

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A. Again, I'd say it ranges from 15, 16, up to early 20s.

Q. And the other ones you said would go up to 30. You think this one skews younger?

A. Yeah, I mean, if I had to argue about 26 or 30, I don't think I could make my argument, but it just seems to me that it's -- both of these last ones are sort of fantasy, you know.

Q. The motorcycle one and the tuxedo one?

A. Yeah, what would you do if you weren't in high school.

Q. Is there anything else about the motorcycle ad that you think appeals to people under the age of 18?

A. No, that's basically it. I mean, realization of a certain kind of fantasy, freedom.

Q. Do you have any opinion as to whether this advertisement would be more appealing to someone 16 or 17 or someone 18 to 21?

A. I would hope more to 16 to 17, but I don't know. I mean, I would hope people grow out of things like this.

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Q. Are you aware that in focus groups when Reynolds tested Joe Camel ads on 18 to 24-year-olds and later 21 and up, that they would regular ask, does this ad appeal to someone your age, younger than you; do you think this advertisement appeals to someone your age, someone younger than you or someone older than you, and they would throw out the ads that the 18 to 21-year-old said appealed to someone younger than they?

MS. FLOWERS: Object to the form of the question.

A. How would I know that?

Q. If they did that, wouldn't that be evidence of an intent not to target people under the age of 18?

A. I don't know. I just don't know the circumstances. I don't know how often they did that. I don't know whether they meant to do that.

Q. Well, if they regularly would ask that question, and they threw out advertisements that people said appealed to people younger than they, assuming that those are the facts, wouldn't

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that indicate to you that Reynolds did not have the intent to target people under the age of 18?

MS. FLOWERS: Object to the form.

A. It would be an indication, but I would really have to see much more to believe that.

Q. The fourth ad in this set that we've marked as Exhibit 29 is a picture of Joe Camel lying in a hammock, again holding out a pack of Camel cigarettes with an outstretched arm and drinking some kind of tropical looking drink.

In your opinion, what is the target market for this advertisement?

A. I would put that one in the 18 and up group, because I don't think little kids, teenagers are very interested in leisure, you know.

Q. Hanging out in a hammock, is that what you mean?

A. Yes.

Q. The next ad does not feature Joe Camel at all. The tag line is camels running out, and there are pictures of the Camel beast.

In your opinion, what is the target

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market for this advertisement?

A. Erwin Ephron. I must say, that it's not very clear what the target market is.

Q. I take it from your comment that you don't think this ad is very effective?

A. I don't think it's very effective. I think it's off strategy, and I'm not sure why you would have to run an ad saying get another pack when you don't have any cigarettes left. And they've gone away from a very effective symbol.

Q. So you think Joe Camel is an effective symbol?

A. Oh, yeah.

Q. Turning to the last advertisement in this set, there is the word Camel, and superimposed on sort of what they call nowadays a retro type superimposed on it is an outline of the camel beast. And what in your opinion is the target market for this advertisement?

A. I can't speak of a specific target. It looks like an art director's nightmare.

Q. And why is that?

A. Well, because it's all design and no idea.

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Q. So I take it that you don't think this advertisement is very effective either?

A. Right.

Q. Just one more Camel ad that I would like to show you. We'll mark it as Exhibit 30?

(McCall Exhibit 30 for identification, Camel advertisement.)

Q. I hand you what I've marked as Exhibit 30, which is another advertisement for the 75th birthday promotion of Camel, and it depicts Joe Camel in fishing gear.

And what in your opinion is the target market for this advertisement?

A. I think this particular ad -- yeah, I would guess that it's any male, you know.

Q. Any male 18 and up? Or older or younger than that?

A. Older than that.

Q. Older than 18?

A. Yes.

Q. How much older?

A. 22, 25. I mean, when people -- I mean, there are plenty of kids who fish seriously, but not as many as there are older

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men. You always have the image of Joe who is, you know, kind of fun to look at for kids, but I wouldn't say that is what the design of this one is.

Q. Do you think that these advertisements that I have shown you are representative of the Camel campaign?

A. I don't know. I mean, I wouldn't think you would run this in Rolling Stone, for instance. I mean, I really would have to see what ads ran where and stuff in greater detail.

Q. Do you know what the demographics of Rolling Stone's readership are?

A. I would guess that a substantial number of teenagers, with a majority of people older; although their demographics may have moved up, because they've gotten more serious as the years have gone.

Q. If Rolling Stone has approximately a mean age of readership of 27.2 and a median age of 25.6, do you see anything wrong with RJ Reynolds placing Camel ads?

A. No, the question is how many people under 18 read it.

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Q. Okay, and what do you think should be their cutoff?

A. I don't know. If it is a substantial number of people, then I think people should look very seriously at it as something they shouldn't do.

Q. Should they look at it in terms of percentages or absolute numbers?

A. Both, but particularly absolute numbers, because that's what we're talking about.

Q. So if a magazine is popular, even though say 80 percent of the readers are over 18, if it's read by millions of people, you would say that Reynolds should not advertise in that publication, is that right?

MS. FLOWERS: Object to the form.

A. There are some publications that are very popular, you know, Time, Newsweek, et cetera, that do not have a substantial youth audience, but there are some that do, and for very good reasons; Sports Illustrated, Rolling Stone, Playboy.

Q. Are you aware that if the FDA

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regulations go into effect, that the tobacco companies will not be able to advertise in publications such as Time and Newsweek?

MS. FLOWERS: Object to the form.

A. I do not know that.

Q. Do you agree with that?

A. I wonder why they felt that way, but --

Q. It's because the -- I believe it's because the size of the readership is so great that even though the percentage of minors reading those publications is not great, the absolute number is sufficient to put it over the threshold set by the FDA.

A. That would be a good reason.

Q. And so you would agree with this then?

A. Yes.

MS. BIXENSTINE: Can you mark this as Exhibit 31.

(McCall Exhibit 31 for identification, Lorus advertisement.)

Q. I'm going to hand you what has been mark as Exhibit 31, which is an advertisement

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that appeared in People Magazine on December 9, 1996, for a Lorus Mickey Mouse watch available at K-Mart. And my question is, looking at this ad, in your opinion, what is the target market?

A. My guess is that it's basically people 20 to 30. I'm not sufficiently knowledgeable about the watch business to know how many kids buy or wear watches, but I would guess it's not huge.

Q. And what is the basis of your opinion that this is targeted to 20 to 30-year-olds?

A. Because it's sort of young, jazzy, fun.

Q. What about it makes it fun and jazzy.

A. Mickey Mouse.

Q. Is the picture of someone strapping on a rollerblade in the top right a factor in your opinion?

A. Well, all the imagery, even the clothes they've got, even the guy -- if that's a guy.

Q. It's a woman, I think.

A. It's a woman, because of the

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fingernails.

Q. All the imagery?

A. All the imagery is youthful.

Q. Youthful meaning 20 to 30?

A. Yes.

Q. And so Mickey Mouse can be an icon that is appealing to people who aren't children?

A. Yes.

Q. And so can Joe Camel?

A. Joe Camel can go both ways.

MS. BIXENSTINE: I'd like to mark this as Deposition Exhibit 32.

(McCall Exhibit 32 for identification, Owens-Corning Advertisement.)

Q. I'm going to hand you what has been marked as Deposition Exhibit 32 for identification. This is an advertisement for Owens-Corning insulation featuring the Pink Panther. In your view, what is the target market for this advertisement?

A. Do-it-yourselfers.

Q. And those people are --

A. People who own houses, I guess.

Q. Generally what age?

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A. Thirty and up.

Q. Why do you think that the Owens-Corning people or the advertisers working for Owens-Corning picked an illustrated character to advertise insulation?

A. Well, I think there are pretty good reasons. One is it's a pink, and so the thought of the Pink Panther must have occurred. But basically you've got the world's dullest product, right? And you've got to do something to breathe a little life into it.

Q. So you think the people would associate with the pink insulation?

A. That's how I'm sure it began, yes.

Q. And are illustrated characters appealing to adults?

A. I think in some ways they appeal to everybody.

Q. And the last advertisement that I wanted to show you today we will mark as Exhibit 33.

(McCall Exhibit 33 for identification, Energizer Advertisement.)

I'm handing you what has been marked

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as Exhibit 33, which is an advertisement in the form of a coupon for Energizer batteries featuring the Energizer bunny.

In your view, what is the target market for this advertisement?

A. Adults.

Q. And do you think that the Energizer bunny has been a successful advertising campaign for Energizer?

A. Yes.

Q. And what is the basis of your opinion?

A. The stuff I've read, and it's a very effective campaign.

Q. Do you know if it's been effective in increasing sales or market share for Energizer batteries?

A. I think both.

Q. And the information you've read, has that been in the media?

A. I suppose Advertising Age and things like that.

MS. BIXENTINE: I'd like to take a quick break to look over my notes and see if

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there's any clean-up I'd like to do, and then we'll wrap up.

(Recess taken.)

MS. BIXENSTINE: I have no more questions now.

Jodi, as you know, I am reserving my rights to reopen the deposition based on other documents produced by you that Mr. McCall may rely on and other areas that you may decide he will testify to later. I am assuming that you want the witness to exercise his right to review the transcript and make corrections.

MS. FLOWERS: Please.

MS. BIXENSTINE: Thank you very much.

(Deposition adjourned: 4:50 p.m.)

_____

DAVID B. McCALL

Subscribed and sworn to before me this _____ day of _____, 1997.

_____

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, DAVID HENRY, a Certified Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That DAVID B. McCALL, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of March, 1997.

DAVID HENRY

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